

No. 12601

United States
Court of Appeals
for the Ninth Circuit.

B. M. CRENSHAW,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of
Housing Expediter,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Montana.

AUG 30 1950

PAUL P. O'BRIEN,
CLERK

No. 12601

United States
Court of Appeals
for the Ninth Circuit.

B. M. CRENSHAW,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of
Housing Expediter,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Montana.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	6
Appeal:	
Bond on	22
Designation of Contents of Record on....	25
Notice of	20
Order Extening Time for Filing and Dock- eting Record on	24
Statement of Points Upon Which Appel- lant Will Rely and Designation of Rec- ord for Consideration on.....	170
Bond on Appeal.....	22
Clerk's Certificate to Transcript of Record....	169
Complaint for Injunction and Restitution....	2
Schedule A—List of Violations.....	5
Designation of Contents of Record on Appeal..	25
Findings of Fact and Conclusions of Law....	8
Conclusions of Law	13
Findings of Fact	8
Judgment and Order	17

INDEX	PAGE
Names and Addresses of Attorneys of Record..	1
Notice of Appeal.....	20
Order Extending Time for Filing and Docket- ing Record on Appeal.....	24
Reporter's Transcript	26
Defendants' Motion for Substitution of Party Plaintiff	27
Motion for Dismissal as to Defendant Jane Doe Crenshaw Granted	28
Stipulation as to Certain Issues of the Case	65
Statement of Points Upon Which Appellant Will Rely and Designation of Record for Consideration on Appeal	170
Witnesses, Defendants':	
Bunker, Eugene F.	
—direct	154
—cross	159
—redirect	167
Crenshaw, B. M.	
—direct	141
—cross	143
—redirect	153

INDEX

PAGE

Witnesses, Plaintiff's:

Crenshaw, B. M.

—direct	89, 130
—cross	105, 131
—redirect	117, 135
—recross	127

DeNayer, Louis G.

—direct	34, 67
—cross	70

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

CLINTON J. CRANDALL,

Office of Housing Expediter,
Seattle, Washington,

Attorney for Appellee and Plaintiff.

E. F. BUNKER,

E. A. PETERSON,

Bozeman, Montana,

Attorneys for Appellant and Defendant.

In the District Court of the United States for the
District of Montana, Helena Division

No. 373

TIGHE E. WOODS, Housing Expediter, OFFICE
OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

B. M. CRENSHAW and JANE DOE CRENSHAW, his wife,
Defendants.

COMPLAINT FOR INJUNCTION
AND RESTITUTION

Comes Now plaintiff and alleges:

I.

That plaintiff is the duly appointed and qualified Housing Expediter, Office of Housing Expediter, an agency of the United States Government, created by the Veterans' Emergency Housing Act 1821 et seq.) and brings this action as such Housing Expediter pursuant to the Housing and Rent Act of 1947 (50 U. S. C. A. App. Sec. 1881-1902) as extended and amended by Public Laws 422 and 464 of the 80th Congress, hereinafter referred to as the Act.

II.

That jurisdiction of this action is vested in the above-entitled Court under Sec. 206 (b) of the Act.

III.

That at all times hereinafter stated, the defendants, B. M. Crenshaw and Jane Doe Crenshaw, whose other or true name is not known, his wife, have been and now are the landlords and operators of a certain housing accommodation situated at 6 West Babcock, Bozeman, Montana, and located within the Bozeman Defense Rental Area. That said housing accommodation is commonly known as the Crenshaw Apartments. That in the judgment of the Housing Expediter the defendants have violated the provisions of the Act and of the regulations issued pursuant thereto, and will continue to violate such Act and such regulations by demanding, receiving and collecting [3*] from tenants occupying apartments in the housing unit hereinabove described rentals in excess of the maximum legal rents fixed and established by law for such apartments and housing accommodations, and have further violated the Act and the regulations by giving a 30 days notice of evictions to certain of their tenants who have refused to pay in excess of the maximum legal rents for the apartments they occupy.

*** Page numbering appearing at bottom of page of original Transcript of Record.**

IV.

That the violations hereinabove referred to are stated in detail as set forth in Schedule "A" attached.

Wherefore plaintiff prays:

1. That an injunction be issued against the defendants and each of them restraining and enjoining them, their agents and employees from demanding, receiving or collecting rentals in excess of the maximum legal rent from tenants occupying any and all of the apartments situated in the Crenshaw Apartments at 6 West Babcock, Bozeman, Montana, and that they be further enjoined and restrained from evicting or attempting to evict tenants who have refused to pay in excess of the legal ceilings in the apartments occupied by such tenants.

2. That the defendants be required to restore and refund to each of said tenants the overcharges as alleged in the Complaint, and

3. That plaintiff have and recover his costs and disbursements herein.

Dated at Seattle, Washington, this 2nd day of June, 1948.

/s/ ROY. C. FOX,

/s/ CLINTON J. CRANDALL,

Attorneys for Plaintiff. [4]

SCHEDULE "A"

Crenshaw Apartments, 6 West Babcock, Bozeman, Montana

Name of Tenant	Apart- ment	Period of Occupancy	MLR	Amt. Chgd.	Amt. O.C. per Mo.	Total O.C.
Major L. W. Konecki	14	Nov. 1-47 to and incl. June 1-48	\$45	\$75	\$30 for 8 mo.	\$240
Mrs. J. M. Ashmore	37	April 6-47 to Mar. 6-48	50	55	5 for 11 mo.	55)
Mrs. J. M. Ashmore	9	Mar. 6-48 to and incl. June 1-48	50	75	25 for 3 mo.	75) \$130
Mrs. John R. Durham	1	Sept. 1-47 to Mar. 1-48	50	100	50 for 6 mo.	300)
Mrs. John R. Durham	1	Mar. 1-48 to June 1-48 incl.	50	85	35 for 4 mo.	140) \$440
Leona Reeves, Clarice Reeves & Louise Ketter	24	April 1-48 to and incl. June 1948	65	75	10 for 3 mo.	30
R. H. Henke	17	Sept. 1-47 to and incl. June 1-47	40	55	15 for 10 mo.	150
Victor B. Barkley	8	April 8-48 to June 1-48	50	75	25 for 2 mo.	50
Joseph D. O'Neill	20	Jan. 15-48 to June 1-48	50	75	25 for 5 mo.	125
Mr. & Mrs. John Vallee	20	June 8-46 to Nov. 28-46	50	75	25 for 5 mo.	125
Mr. & Mrs. John Vallee	21	Nov. 29-46 to Aug. 20-47	50	75	25 for 9 mo.	225
Mr. & Mrs. John Vallee	16	Aug. 20-47 to June 1-48	55	*75	20 for 9 mo.	180
Mr. & Mrs. R. C. Gregar	21	Mar. 5-48 to June 1-48	50	75	25 for 3 mo.	75
Mr. & Mrs. E. A. Wilson	18	April 15-48 to June 1-48	50	75	25 for 1½ mo.	37.50
Mr. & Mrs. Carl Jones	48	April 10-48 to June 1-48	15	11.25 wk.	7.50 per wk. for 5 wks.	37.50
Priscilla Larson	36	Nov. 1-47 to June 1-48	40	65 per mo.	25 for 8 mo.	200.00
Mr. & Mrs. M. C. Davies	12	Nov. 1-47 to June 1-48	65	75	10 for 8 mo.	80.00

* Except March, paid \$55.

[Endorsed]: Filed June 7, 1948.

[Title of District Court and Cause.]

No. 373

ANSWER

Comes Now, B. M. Crenshaw, one of the above-named defendants and for answer to the complaint for injunction and restitution, admits, denies, and alleges as follows:

I.

Admits the allegations of paragraph one and two of said complaint.

II.

Answering paragraph three of plaintiff's complaint this answering defendant alleges that the operators of that certain building known as Crenshaw Apartments is the Trustee for the Mortgagor and its assigns; that this answering defendant is the agent only for said assigns, and further this answering defendant denies each and every allegation in said paragraph three contained and specifically denies that he is violating the regulations issued and denies that he will continue to violate such act as alleges in said complaint, and further specifically denies that his thirty (30) days notice of eviction was a violation of the act and especially denies that the thirty days notice was given to tenants who had refused to pay in excess of the maximum legal rents for the apartments, and alleges that the thirty days notice was given

pursuant to the thirty days of the State of Montana and such notices were within the rights of the affiant for the landlord. [8]

III.

Answering the allegations of paragraph four of plaintiff's complaint defendant denies each and every allegation therein contained.

IV.

This answering defendant demands a trial by jury in the above-entitled action.

Wherefore defendant prays:

1. That the plaintiff go hence and take nothing by his complaint.
2. That no injunction be issued.
3. That the defendant have and recover his costs and disbursements herein.

Dated at Bozeman, Montana, this 6th day of July, 1948.

E. F. BUNKER,
Attorney for Defendant.

[Endorsed]: Filed July 7, 1948.

[Title of District Court and Cause.]

No. 373

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came duly on for trial before the above-entitled Court on the 26th day of September, 1949, the Honorable W. D. Murray, United States District Judge presiding and sitting without a jury. C. E. Knowlton, Jr. appeared for the plaintiff and Eugene Bunker and E. A. Peterson appeared for the defendant, and Jane Doe Crenshaw having been dismissed from the action and evidence, both oral and documentary having been introduced and certain facts having been stipulated to by the parties and Briefs having been submitted, the Court being fully advised in the premises, now makes as its

Findings of Fact

1. That the plaintiff is and was at the time of the commencement of this action the duly appointed and qualified Housing Expediter.

2. That the defendant, B. M. Crenshaw, was landlord and operator of a certain multiple unit controlled housing accommodation located at 6 West Babcock, Bozeman, Montana, which accommodation was commonly known as the Crenshaw Apartments, and at the times of these Findings he rented and offered for rent such apartments within such housing accommodations.

3. That the defendant rented Apt. 1 in the Crenshaw Apartments to one John R. Durham from September 1, 1947, to October 31, 1947, at the rate of at least \$100 per month, and continued to rent such Apt. 1 to the said Durham at the rate of at \$85 per month from November 1, 1947, to June 1, 1948. [11]

4. That the rent registered by the defendant and now on file with the Office of Housing Expediter was being charged for Apt. 1 within the Crenshaw Apartments on July 1, 1945, and as reaffirmed by Order of the Rent Director of Bozeman on January 4, 1947, was \$35.00 per month.

5. That the defendant rented Apt. 8 in the Crenshaw Apartments to one Victor B. Barkley from April 8, 1948, to June 1, 1948, a period of $1\frac{2}{3}$ months, receiving from such tenant for such apartment at the rate of \$75.00 per month.

6. That an Order was issued by the Rent Director of Bozeman, Montana, applicable to Apt. 8 in the Crenshaw Apartments on February 20, 1947, fixing the rent for such apartment at \$50.00 per month furnished.

7. That the defendant rented Apt. 9 in the Crenshaw Apartments to one J. M. Ashmore from March 6, 1948, to June 1, 1948, a $2\frac{5}{6}$ month period, and charged such tenant for such apartment at the rate of \$75.00 per month.

8. That an Order was issued by the Rent Director for Bozeman applicable to Apt. 9 in the

Crenshaw Apartments on February 20, 1947, fixing the rent thereon at \$50.00 per month furnished.

9. That the defendant rented Apt. 12 within the Crenshaw Apartments to M. C. Davies from November 1, 1947, to June 1, 1948, and charged such tenant for such apartment at the rate of \$75.00 per month.

10. That an Order was issued by the Rent Director of Bozeman applicable to Apt. 12 in the Crenshaw Apartments on February 20, 1947, fixing the rent at \$65.00 per month.

11. That the defendant rented Apt. 14 within the Crenshaw Apartments to one L. W. Konecki from November 1, 1947, to June 1, 1948, 7 months and charged such tenant for such apartment at the rate of \$75.00 per month, which sum this tenant, by agreement and collusion with the defendant agreed to pay in exchange for the agreement of the landlord to provide such tenant with such additional services and equipment. [12]

12. That an Order was issued by the Rent Director for Bozeman applicable to Apt. 14 within the Crenshaw Apartments on February 20, 1947, fixing the rent at \$45.00 per month.

13. That the defendant rented Apt. 16 within the Crenshaw Apartments to one John Vallee on August 20, 1948, to June 1, 1948, a period of 9½ months and charged such tenant for such apart-

ment during such period at the rate of \$75.00 per month.

14. That an Order was issued on January 4, 1947, by the Rent Director for Bozeman applicable to Apt. 16 within the Crenshaw Apartments fixing the rent at \$55.00 per month furnished.

15. That the defendant rented Apt. 17 within the Crenshaw Apartments to one R. H. Henke from September 1, 1947, to June 1, 1948, 9 months and charged such tenant for such apartment at the rate of \$55.00 per month.

16. That an Order was issued by the Rent Director at Bozeman applicable to Apt. 17 within the Crenshaw Apartments fixing the rent applicable thereto at \$40.00 per month.

17. That the defendant rented Apt. 18 within the Crenshaw Apartments to one E. A. Willson from April 15, 1948, to June 1, 1948, 1½ months, and charged such tenant for such apartment at the rate of \$75.00 per month.

18. That the rent registered by the defendant as being charged on July 1, 1945, on file with the Office of Housing Expediter for Apt. 18 within the Crenshaw Apartments was \$50.00 per month.

19. That the defendant rented Apt. 20 within the Crenshaw Apartments to one Joseph D. O'Neill from January 15, 1948, to June 1, 1948, 4½ months, and charged such tenant for such apartment at the rate of \$75.00 per month.

20. That an Order was issued by the Rent Director for Bozeman applicable to Apt. 20 within the Crenshaw Apartments on June 26, 1947, fixing such rental at \$50.00 per month.

21. That the defendant rented Apt. 21 within the Crenshaw Apartments [13] to one John Vallee from July 20, 1947, to August 20, 1947, and demanded and received from such tenant rent at \$75.00 per month.

22. That the maximum rent applicable to Apt. 21 within the Crenshaw Apartments was \$50.00 per month.

23. That the defendant rented Apt. 24 within the Crenshaw Apartments to C. Reeves, L. Reeves and L. Ketter on April 1, 1948, to June 1, 1948, two months, and charged and received from such tenants rent at the rate of \$75.00 per month, which these tenants by agreement and collusion with the defendant agreed to pay in exchange for the agreement of the landlord to provide such tenants with additional services and equipment.

24. That an Order was issued by the Rent Director of Bozeman fixing the rent on Apt. 24 within the Crenshaw Apartments on February 20, 1947, at \$65.00 per month.

25. That the defendant rented Apt. 36 within the Crenshaw Apartments to Priscilla Larson from November 1, 1947, to June 1, 1948, and charged such tenant for such apartment at the rate of \$65.00 per month.

26. That an Order was issued by the Rent Director at Bozeman on February 20, 1947, fixing the rent on Apt. 36 within the Crenshaw Apartments at \$40.00 per month.

27. That the defendant rented Apt. 37 within the Crenshaw Apartments to one J. M. Ashmore from July 6, 1947, to March 6, 1948, and demanded and received from such tenant a consideration of \$55.00 per month during this period for such apartment.

28. That an Order was issued by the Rent Director at Bozeman on February 20, 1947, fixing the rent on Apt. 37 within the Crenshaw Apartments at \$40.00 per month.

29. That the defendant rented Apt. 48 within the Crenshaw Apartments to one Carl Jones from April 10, 1948, to June 1, 1948, and demanded and received from such tenants for such apartment rent at the rate of \$11.25 per week.

30. That an Order was issued by the Rent Director at Bozeman on [14] January 6, 1947, fixing the rent on Apt. 48 within the Crenshaw Apartments at \$15.00 per month, and from these Findings of Fact the Court makes the following:

Conclusions of Law

1. That plaintiff as Housing Expediter is entitled to maintain this action under and pursuant to the Housing and Rent Act of 1947, as amended.

2. That jurisdiction of this cause is conferred upon this Court by Sec. 206(b) of the Housing and Rent Act of 1947, as amended.

3. That the maximum rent for Apt. 1 within the Crenshaw Apartments is and was \$35.00 per month, and the defendant, by charging John R. Durham \$100 per month for September and October of 1947, and \$85 per month for the 7 months from November 1, 1947, to June 1, 1948, overcharged such tenant in the total amount of \$480.00.

4. That the maximum rent on Apt. 8 within the Crenshaw Apartments is and was \$50 per month and the defendant, by charging Victor B. Barkley the sum of \$75.00 per month for the $1\frac{2}{3}$ months involved, overcharged such tenant in the amount of \$41.50.

5. That the maximum rent on Apt. 9 within the Crenshaw Apartments is and was \$50 per month and the defendant, by charging J. M. Ashmore the sum of \$75 per month for the $2\frac{5}{6}$ months involved, overcharged such tenant in the total amount of \$70.80.

6. That the maximum rent on Apt. 12 within the Crenshaw Apartments is and was \$65 per month and the defendant, by charging M. C. Davies the sum of \$75.00 per month for the 8 months involved, overcharged such tenant the sum of \$70.00.

7. That the maximum rent on Apt. 14 within the Crenshaw Apartments is and was \$45 per

month and the defendant, by charging L. W. Konecki the sum of \$75 per month for the 7 months involved, overcharged such tenant the sum of \$210.00, but that this tenant is not entitled in the exercise of the sound equitable discretion of the Court to the refund of such sum by reason of his agreements and collusion with the defendant. [15]

8. That the maximum rent on Apt. 16 within the Crenshaw Apartments is and was \$55 per month and the defendant, by charging John Vallee the sum of \$75.00 per month for $9\frac{1}{3}$ months involved, overcharged such tenant in the sum of \$186.66.

9. That the maximum rent on Apt. 17 within the Crenshaw Apartments is and was \$40 per month and the defendant, by charging R. H. Henke the sum of \$55 per month for the 9 months involved, overcharged such tenant in the amount of \$135.00.

10. That the maximum rent on Apt. 18 within the Crenshaw Apartments is and was \$50 per month and the defendant, by charging E. A. Willson the sum of \$75 per month for the $1\frac{1}{2}$ months involved, overcharged such tenant the total sum of \$37.50.

11. That the maximum rent on Apt. 20 within the Crenshaw Apartments is reg. and was \$50 per month and the defendant, by charging Joseph D. O'Neill \$75 per month for the $4\frac{1}{2}$ months involved, overcharged such tenant the sum of \$112.50.

12. That the maximum rent for Apt. 21 within the Crenshaw Apartments is and was \$50 per month and the defendant, by charging John Vallee the sum of \$75 per month for the 1 month involved, overcharged such tenant in the amount of \$25.00.

13. That the maximum rent on Apt. 24 within the Crenshaw Apartments is and was \$65 per month, and by charging tenants Reeves, Ketter and Reeves the sum of \$75 per month for the 2 months involved, the defendant overcharged such tenants the total sum of \$20.00, but that these tenants are not entitled in the exercise of the sound equitable discretion of the Court to the refund of such sum by reason of their agreements and collusion with the defendant.

14. That the maximum rent on Apt. 36 within the Crenshaw Apartments is and was \$40 per month and by charging Priscilla Larson the sum of \$65.00 per month for the 7 months involved, the defendant overcharged such tenant in the amount of \$175.00.

15. That the maximum rent on Apt. 37 within the Crenshaw Apartments [16] is and was \$40 per month and the defendant, by charging J. M. Ashmore the sum of \$55 per month for the 8 months involved, overcharged that tenant the sum of \$120.00.

16. That the maximum rent on Apt. 48 within the Crenshaw Apartments is and was \$15 per

month and the defendant, by charging Carl Jones the sum of \$11.25 per week for the 6 weeks involved, overcharged such tenant in the sum of \$45.00.

Let Judgment for Injunction and Restitution for Overcharge Be Entered.

Done in Open Court this 21st day of February, 1950.

W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed Feb. 21, 1950.

[Title of District Court and Cause.]

No. 373

JUDGMENT AND ORDER

This cause came duly on for trial before the above-entitled Court on the 26th, 27th and 28th days of September, 1949, and the Court having entered its Findings of Fact and Conclusions of Law herein, Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that the defendant, B. M. Crenshaw, shall pay and restore to the following named persons the following sums which sums represent the amounts which this defendant has charged such persons in excess of the otherwise applicable maximum rents established under and pursuant to the Housing and Rent Act

of 1947, as amended, in connection with such defendant's operation of the housing accommodations located at 6 West Babcock, Bozeman, Montana, to wit:

Tenant	Amount
John R. Durham.....	\$ 480.00
Victor B. Barkley.....	41.50
J. M. Ashmore.....	190.80
M. C. Davies.....	70.00
John Vallee.....	211.66
R. H. Henke.....	135.00
E. A. Willson.....	37.50
Joseph D. O'Neill.....	112.50
Priscilla Larson.....	175.00
Carl Jones	45.00
Treasurer of the United States.....	230.00
	<hr/>
	\$1728.96

That the sum payable to the Treasurer of the United States represents moneys collected by this defendant in excess of the otherwise applicable [19] maximum rents from tenants whom the Court has found not entitled in equity and good conscience to receive restitution.

It Is Further Ordered that the defendant shall

pay the total of such sum referred to above or \$1728.96 by check or money order payable to the Treasurer of the United States at the Office of the Housing Expediter, 905½-3rd Avenue, Seattle, Washington, whereupon such sums shall be distributed by the Office of the Housing Expediter to the persons entitled thereto under the terms of this Order.

It Is Further Ordered, Adjudged and Decreed that the defendant is hereby restrained and enjoined, together with his agents and servants from charging or attempting to charge, rentals in excess of the otherwise applicable maximum rentals as established under and pursuant to the Housing and Rent Act of 1947, as amended, in connection with housing accommodation operated by this defendant and located at 6 West Babcock, Bozeman, Montana.

Plaintiff shall have and recover his taxable costs herein upon due notice to the defendant thereof.

Done in Open Court this 21st day of February, 1950.

W. D. MURRAY,

United States District Judge.

Presented by:

/s/ C. E. KNOWLTON, JR.

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 21, 1950.

Entered & Noted in Civil Docket, February 23, 1950. [20]

[Title of District Court and Cause.]

No. 373

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS

Notice is hereby given that B. M. Crenshaw, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment and order entered in this action on the 21st day of February, 1950, and in which order it is set forth that the defendant, B. M. Crenshaw, shall pay and restore to the following named persons the following sums which sums represent the amounts which this defendant has charged such persons in excess of the otherwise applicable maximum rents established under and pursuant to the Housing and Rent Act of 1947, as amended, in connection with such defendant's operation of the housing accommodations located at 6 West Babcock, Bozeman, Montana, to wit:

John R. Durham.....	\$ 480.00
Victor B. Barkley.....	41.50
J. M. Ashmore.....	190.80
M. C. Davies.....	70.00
John Vallee.....	211.66
R. H. Henke.....	135.00
E. A. Willson.....	37.50
Joseph D. O'Neill.....	112.50
Priscilla Larson.....	175.00

Carl Jones	45.00
Treasurer of the United States.....	230.00
<hr/>	
Total	\$1728.96

That the sum payable to the Treasurer of the United States represents moneys collected by this defendant in excess of the otherwise applicable maximum rents from tenants whom the Court has found entitled in equity and good conscience to receive restitution. [171]

That the defendant shall pay the total of such sum referred to above or \$1728.96 by check or money order payable to the Treasurer of the United States at the Office of the Housing Expediter, 905 $\frac{1}{2}$ -3rd Avenue, Seattle, Washington, whereupon such sums shall be distributed by the Office of the Housing Expediter to the persons entitled thereto under the terms of this Order.

That the defendant is hereby restrained and enjoined, together with his agents and servants from charging or attempting to charge, rentals in excess of the otherwise applicable maximum rentals as established under and pursuant to the Housing and Rent Act of 1947, as amended, in connection with housing accommodation operated by this defendant and located at 6 West Babcock, Bozeman, Montana.

E. F. BUNKER,
ERNEST A. PETERSON,
Attorneys for Appellant.

[Endorsed]: Filed April 21, 1950. [172]

[Title of District Court and Cause.]

No. 373

BOND ON APPEAL

Whereas, the above-named Plaintiff has secured a Judgment and Order in the District Court of the United States for the District of Montana, Helena Division, against the above-named Defendant for the direct payment of money from the Defendant in the sum of \$1,728.96 lawful money of the United States, payable to the Treasurer of the United States at the Office of the Housing Expediter, 905½-3rd Avenue, Seattle, Washington, besides interest, and said Defendant is about to file "Notice of Appeal" in the said action to the United States Circuit Court of Appeals, for the Ninth District at San Francisco, California.

Now Therefore, the undersigned, National Surety Corporation, a Corporation created and existing under the laws of the State of New York, in consideration of the premises and of the appeal, does hereby undertake in the sum of \$250 and promises to the effect, that if said Defendant shall dismiss said appeal or if the Judgment be affirmed, the said Defendant will pay costs that may be awarded

by the said Appellate Court, not exceeding the sum of \$250.

Dated this 20th day of April, A.D. 1950.

NATIONAL SURETY
CORPORATION,

By /s/ S. J. KAISLER, JR.,
Attorney in Fact.

Countersigned:

WAITE & COMPANY,

[Seal] By /s/ S. J. KAISLER, JR.,
Resident Agent.

[Endorsed]: Filed April 21, 1950. [174]

[Title of District Court and Cause.]

No. 373

ORDER EXTENDING TIME FOR FILING
AND DOCKETING RECORD ON APPEAL

Application having been made for extension of time for filing the record on appeal and docketing the appeal with the Appellate Court within forty days from the date of filing the Notice of Appeal herein; and good cause appearing therefore.

It is ordered that the time for the defendant, B. M. Crenshaw, for filing the record on appeal and docketing the appeal in the United States Court of Appeals for the Ninth Circuit be extended to July 1, 1950, and that said defendant have such additional time for filing and docketing such record on appeal.

Dated at Butte, Montana, May 29th, 1950.

W. D. MURRAY,
District Judge.

Entered & Noted in Civil Docket May 31, 1950.

[Endorsed]: Filed May 29, 1950.

[Title of District Court and Cause.]

No. 373

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the above-named District Court:

You will please take notice that B. M. Crenshaw, the Defendant in the above-entitled action, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and order entered in this action on the 21st day of February, 1950, in favor of the plaintiff and against the defendant above named and said defendant hereby requests a transcript of the pleadings and of the testimony and evidence offered and received, and the original exhibits, rulings or statements of the Court, also all objections and exceptions of counsel, a transcript of the Court's findings of fact and conclusions of law and the judgment and order rendered herein, be made up and prepared.

Dated this 15th day of June, 1950.

E. F. BUNKER,

E. A. PETERSON,

Attorneys for Defendant and Appellant, B. M.
Crenshaw.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 16, 1950. [178]

In the United States District Court, District of
Montana, Helena Division

No. 373

TIGHE E. WOODS, Housing Expediter, OFFICE
OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

B. M. CRENSHAW and JANE DOE CRENSHAW, His Wife,
Defendants.

REPORTER'S TRANSCRIPT

Be It Remembered, that the above cause came on regularly for trial before the Hon. W. D. Murray, United States District Judge for the District of Montana, sitting without a jury, in the Court Room of said court in the United States Post Office Building, Butte, Montana, on the 26th, 27th and 28th days of September, 1949, Mr. C. E. Knowlton, Jr., Seattle, Washington, appearing as attorney for said plaintiff; and the defendant, B. M. Crenshaw, being present in person, and represented by his attorneys, Messrs. E. F. Bunker and Ernest A. Peterson, of Bozeman, Montana.

Whereupon, the following proceedings were had:

The Court: Cause No. 373, Tighe E. Woods, Housing Expediter, vs. B. M. Crenshaw? Has every effort been made to settle these matters in accordance with the agreement that was made in Missoula?

Mr. Knowlton: We did our best, your Honor. We attempted [22] to secure the necessary clearances that were necessary and were unable to do so.

The Court: You don't think there is anything further that can be done to settle the matter?

Mr. Knowlton: It had something to do with the Rent Advisory Board at Bozeman. Mr. Gaines, the Chairman, called two meetings of the Board, and Mr. Crandall of our Seattle office consulted with the Board by telephone and attempted to carry out the settlement and was unable to secure any clearances on it.

The Court: Very well, then, we will proceed with the trial. There are two cases here?

Defendants' Motion for Substitution
of Party Plaintiff

Mr. Bunker: At this time, on 373, your Honor, I don't believe there has been any motion on the part of the government or Tighe E. Woods to change this arrangement. As I understand it, Tighe E. Woods is no longer a Housing Expediter. Therefore, there is no plaintiff.

The Court: What is your position on that?

Mr. Knowlton: He is still Housing Expediter. It happens that on April 1, 1949, the Housing and Rent Act, on which both actions were predicated, was amended so as to require any new actions filed to be filed in the name of the United States. That

is why the other case is brought in the name of the United States. Under the rules there need not be any substitution of Woods in the first action. He was the person [23] authorized to bring the action. I believe the Court, if there was any reason for it, could order substitution of the United States as to the first cause of action, but I see no necessity for it.

The Court: Tighe E. Woods is still Housing Expediter?

Mr. Knowlton: That is correct, your Honor.

The Court: It is merely an amendment in the law with reference to the manner in which an action is to be commenced after April 1 of this year?

Mr. Knowlton: Yes.

The Court: Well, the Court sees no reason for amending or ordering a substitution of parties. Is that what your motion is?

Mr. Bunker: That was my motion, your Honor.

The Court: Your motion is denied.

Motion for Dismissal as to Defendant

Jane Doe Crenshaw Granted

Mr. Peterson: May it please the Court, I am attorney of record in 373 as attorney for Mrs. Crenshaw, and I have a letter from Mr. Knowlton to the effect he would move for dismissal as to Mrs. Crenshaw in this case this morning. I would like to know counsel's attitude.

Mr. Knowlton: I am agreeable to having Mrs. Crenshaw dismissed in Cause 373. I understand

the parties are divorced and she had nothing to do with it.

The Court: Very well. What is our situation with the two cases? Can they be consolidated for trial? [24]

Mr. Knowlton: I would like to move that they be consolidated. My witnesses will testify as to continuing acts which apply not only to the first cause of action, but to the second. The relationship is a little different on the two actions. However, I think there is no reason why they could not be more easily consolidated for trial and tried as if they were one case.

Mr. Peterson: In Cause 444, at this time or some subsequent time, I have in mind to move the Court for dismissal on the jurisdictional question which was raised and determined by Judge Shaw in the case of Woods against Shore Line Cooperative. Not that that case is controlling in this matter, but it is a case which arose in the Northern District of Illinois in the Seventh Circuit. The way I view 444, it is definitely under the 1949 amendment. I wish to raise a jurisdictional question on that. That is my attitude.

Mr. Knowlton: It would seem to me counsel could raise his legal objections as to any part of the two causes of action without making any difference in the trial of the facts of the actions.

The Court: Is the proof necessary in one case different from the proof in the other?

Mr. Knowlton: It varies slightly. Some of the witnesses will be the same, if the Court please.

The Court: I think we had better proceed separately. [25]

Mr. Knowlton: Very well.

The Court: Now, with reference to your jurisdictional attack in Cause No. 444, however, the Court would like to hear argument on that at this time before we open the trial of any cases. This is an opportune time to consider it. There is no use waiting until after we get into evidentiary matters. If you have a point, I would like to hear it at this time.

(Whereupon, a motion to dismiss was made in Cause No. 444, United States of America vs. B. M. Crenshaw, and argument made in support of said motion. A recess was taken until 2:00 o'clock p.m., the same day, September 26, 1949, at which time the following proceedings were had:)

The Court: You may proceed with Cause No. 373, and I would appreciate at the outset a statement as to the issues of the case.

Mr. Knowlton: If the Court please, the first cause of action was brought in the name of Mr. Woods, the party plaintiff, as Housing Expediter, and this action, the first cause of action, as is the second, is based upon the Housing and Rent Act of 1947. This Act in terms establishes maximum rents for housing accommodations in those areas

where rent control was in effect on June 30, 1947, under authority of the Emergency Price Control Act, and at such rates as such Emergency Price Control Act provided for such rentals. Now, to just outline the basis of maximum rentals as established under such Emergency Price Control [26] Act, they were established by regulation authorized by such Act. The plan of rent control was to select a date upon which rents were more or less normal in particular areas, and make the maximum rent as those rents that were charged on that date. By the regulation, the maximum rent date in Bozeman, the place where this particular violation is alleged to have occurred, is July 1, 1945. The maximum rent for all housing accommodations in that area became the rental charged on July 1, 1945, subject, of course, to adjustment by the Rent Director of such area. Mr. Crenshaw, it appears, has been operating a multiple unit accommodation at Bozeman, known as the Crenshaw Apartments. It is charged in the first cause of action in numerous cases, Mr. Crenshaw has charged rents in connection with such apartments more than the maximum rents provided for such (interrupted).

The Court: You refer to the first cause of action. Do you mean this cause, No. 373?

Mr. Knowlton: That is correct.

The Court: There is just one cause of action set forth in that?

Mr. Knowlton: It is alleged and set forth in a schedule the instances in which it is alleged Mr.

Crenshaw charged more than the maximum rents. The schedule is attached to that cause of action. There is only one cause of action set forth in the complaint, but there are two reliefs asked as a result [27] of this cause of action. The plaintiff asked as a first relief that he be enjoined—that the Court issue an injunction against Mr. Crenshaw, if the Court finds he has overcharged, enjoining him in the future from charging more than the maximum rents applicable to his accommodations in Bozeman. Secondly, the plaintiff asks, as to the first cause, No. 373, asks that the Court issue an order for the purpose of enforcing compliance with that act, to require the defendant to pay such sums as he may have already taken from the various persons that were his tenants or are his tenants, to repay and restore to them, as a means of enforcing such Act, such amounts as he has taken from them in excess of the otherwise applicable maximum rent. That is exactly what we have asked for in this first cause, Woods vs. Crenshaw. We will establish the maximum rents through the testimony of the Rent Director, and we will have a number of tenants here who will testify how much rent they paid for those accommodations.

The Court: Of the allegations in the complaint, which are put in issue by the answer?

Mr. Knowlton: I believe they all are. I believe the answer is merely a general denial.

The Court: A general denial of all the facts?

Mr. Knowlton: I might state in that connection,

we served upon the attorneys for the defendant a certain Request for Admissions under Rule 36, and Mr. Crenshaw was allowed to file [28] his answer in reply to such Request for Admissions. There is some of the facts which we will rely on and which are admitted in that answer or Reply to Request for Admissions. For example, for almost all the people in occupancy, Mr. Crenshaw has admitted the period for which they were in there. He, however, denies the amount of rent they were charged. In numerous cases as to the establishment of the maximum rent, he has admitted a lot of registrations, that is, what he registered as being charged on this maximum rent date, which he was required under regulation to register with the office in Bozeman. He has admitted the truth and veracity of such copies which were served upon him with the request. As to a few, he denied. As to certain orders which were sent in connection with it, he has denied it almost across the board.

The Court: Very well. Call the first witness.

Mr. Bunker: May it please the Court, it now appears to me that since this action was brought, the control Act under which it was brought has passed out of existence. The injunction relief depends upon that Control Act of 1947. Therefore, at this time, although the matter of the other relief might be before the Court, the injunctive relief, I believe, has passed out of existence, because it would depend upon the existence of that Act, not of the new Act.

The Court: If you wish to submit to the Court a written statement as to your position in that respect and give me any [29] authority you have, I will, of course, consider it before issuing any injunctive relief, if it appears injunctive relief would otherwise be granted.

LOUIS G. DeNAYER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Knowlton:

Q. State your name, please.

A. Louis G. DeNayer.

Q. Where do you reside, Mr. DeNayer?

A. Billings, Montana.

Q. What is your official position?

A. Area Rent Director.

Q. Where?

A. For Billings, Miles City, Livingston and Bozeman.

Q. How long have you been so employed and engaged? A. For the past four years.

Q. What are your duties as Rent Director, especially in connection with Bozeman?

A. I have charge of all of the records and files. I issue the orders when they are issued.

Q. In connection with Bozeman, is that correct?

A. Yes. [30]

(Testimony of Louis G. DeNayer.)

Q. Showing you Plaintiff's Exhibit 1 for identification, would you look at such document, and state what that is, if you know?

A. It is a file concerning Apartment 1, 6 West Babcock Street, Bozeman, Montana.

Q. Where did it come from?

A. It came from our files in Bozeman, Montana.

Mr. Bunker: To which we object (interrupted).

The Court: Has an offer been made?

Mr. Knowlton: An offer hasn't been made, if your Honor please. I just want you to see what it is, Mr. Bunker.

Q. Showing you Plaintiff's Exhibit 2 for identification, will you state what that is, if you know?

A. This is the file containing all of the file on Apartment 8 at 6 West Babcock at Bozeman, Montana.

The Court: I might inquire, counsel, don't you intend to offer these in evidence?

Mr. Knowlton: Yes, I was trying to speed things up by identifying the lot of them. I will offer them all at once.

The Court: I think it would be better to make your offer separately to each one as you come along.

Q. Showing you again Plaintiff's Exhibit 1 for identification, those are records of your office regarding apartment 1. What does the record show, Mr. DeNayer?

A. It shows that the registration was filed on

(Testimony of Louis G. DeNayer.)

April 16, [31] 1946, showing the maximum rent for the apartment 1 at \$35. Do you want the entire file?

Q. Is there an order issued changing such maximum?

Mr. Bunker: To which we object. The file is the best evidence.

The Court: Sustained.

Mr. Knowlton: I will offer Plaintiff's Exhibit 1.

Mr. Bunker: Objected to upon the grounds and for the reason that in the demand made by plaintiff in this action, the file shown for Exhibit 1, as handed to this attorney, shows that Apartment No. 1 was \$15.

The Court: How would that affect the admissibility of this? It might contradict it, but it doesn't affect its admissibility.

Mr. Bunker: He would be bound, I think, your Honor, by any exhibit he hands to me, and asks me to verify.

Mr. Knowlton: I think counsel is confused here. I think I can refer counsel to the number of the exhibit.

The Court: This Exhibit 1 is the official file in your custody?

The Witness: Yes.

The Court: It is the file upon which you make your determinations and upon which you rely in making your determinations with reference to your work in the Bozeman area, is it?

(Testimony of Louis G. DeNayer.)

The Witness: That's right.

The Court: With particular reference to this apartment? [32]

The Witness: Yes, sir.

The Court: The objection is overruled. Plaintiff's Exhibit 1 is admitted in evidence.

(Plaintiff's Exhibit 1, being Registration Statement for Apartment No. 1, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Mr. Bunker: Is that the original? May I take another look at that?

The Court: It is on the Clerk's desk.

Mr. Bunker: This Exhibit, your Honor, is further objected to, if I may ask to be permitted to make the objection——

The Court: Yes.

Mr. Bunker: ——upon the grounds and for the reason it isn't the original registration signed by this defendant. It is a copy and a typewritten signature put on it.

The Court: Where is the original?

The Witness: The original is in the files in this Court which was submitted in a suit which was filed against B. M. Crenshaw in 1947, I believe it was, and our attorneys did not ask to submit a copy.

The Court: The original was filed in Court in connection with another suit?

(Testimony of Louis G. DeNayer.)

The Witness: In another suit.

The Court: But this is the record on which you, as an official, [33] rely?

Mr. Bunker: It is objected to as not the best evidence; that the best evidence is available as being in this Court, if they wished to produce it.

Mr. Knowlton: If I might say something here. I think plaintiff has already admitted that this is substantially what is contained in the Exhibit by his answer to Request No. 24, in which he admits that Exhibit E is a copy of the registration statement filed in the Bozeman Defense Rental Area Office, except as to certain exceptions at Line 7, Section C, which he denies, but he admits it is a true copy of it, and I see no reason why he objects to it so far as the registration file—that is on page 4, line 20 of the Answers to Requests for Admissions.

Mr. Bunker: I admit that was a copy that was in the Defense Area Rent Office, but I don't admit it is the one signed by B. M. Crenshaw or that it is exactly the same as signed by B. M. Crenshaw. I merely admit that was the one in the Rent Office in Bozeman. That is as far as I go.

The Court: The original is available, is it not?

Mr. Knowlton: I frankly don't know of my own personal knowledge.

The Court: Are the originals for the others here?

Mr. Knowlton: Some of them are.

(Testimony of Louis G. DeNayer.)

The Court: If you have the originals, I think you should use them. [34]

Mr. Knowlton: I have not the original to Apartment 1. About my only purpose of offering that file is to show the order that is also attached to that file. The defendant has admitted that the pertinent provision regarding that registration—he has admitted that was what was filed in the Rent Office, which presumably becomes the maximum rent. He has admitted the original document we filed in there showing the maximum rent on the maximum rent date is \$35 a month. I would like at this time to inquire, Mr. DeNayer, whether such rent was changed by order. Is there any order in these documents showing any change of that maximum rent that was so registered?

A. There was a Docket I-66 of the Bozeman office, which was merely an order to establish the maximum rent at the registration rent, or a reaffirmation of the registration.

The Court: Don't your files contain the original of this document, what do you call it, registration?

The Witness: Registration statement.

The Court: Does the file contain the original?

The Witness: It contains the original with the exception of the ones that were in another action that was brought against Mr. Crenshaw and our attorneys failed to substitute copies for the originals after the trial.

(Testimony of Louis G. DeNayer.)

The Court: Those records are in the files of this Court?

The Witness: Of this court. [35]

The Court: I think that we should have the originals here, or at least an explanation of why they are not available. Now, we can get the original of this document of registration.

Mr. Knowlton: I assume if they are any place, they will be in Helena.

The Court: The Court will make a proper order for that, if you will prepare a proper order for the Clerk. If you will get the name and number of the case, I can make a proper order and have them transferred here so that we can have them and have them introduced in evidence. For the time being, and in order to proceed, I will overrule the objection so that we may proceed, but I will expect counsel, at the proper time, to bring in the original records and substitute them for the copies that are here presented.

Q. (By Mr. Knowlton): I have changed, Mr. DeNayer, Plaintiff's Exhibit 2, and hand you a single piece of paper. Would you state what that is, if you know?

A. This is an order determining the maximum rent of Apartment 8 at 6 West Babcock Street at Bozeman, Montana.

Q. Is that the original of such instrument?

A. This is the original.

Q. Where is it from?

(Testimony of Louis G. DeNayer.)

A. It is from Bozeman.

Q. Has there been any changes in the orders affecting the apartment you mentioned? [36]

A. The order shows that the Director finds that the rent on the maximum rent date was \$35.00 per month, unfurnished, which amount is the maximum rent for the above-described accommodation. The maximum rent for the above furnished accommodation is fixed at \$50.00 per month, the rent which the Rent Director finds was the rent generally prevailing in this Defense Rental Area for comparable housing accommodations on the maximum rent date. This order is effective to establish the maximum rent as of March 1, 1946.

Q. Has there been any order changing it or altering it?

A. There has been no order to my knowledge changing it.

Q. If there was any such order, where would it be?

A. It would be in the files.

Q. That is the full file—state what that is?

A. This includes the original registration statement filed by Crenshaw, which shows the rent on the maximum rent date to have been \$35.00 per month. It also shows (interrupted).

Q. Was there any order changing the rent after that?

A. No.

The Court: Is the document that you have been referring to, the order, is that marked as an Exhibit?

(Testimony of Louis G. DeNayer.)

Mr. Knowlton: That is correct, your Honor.

The Court: What Exhibit is it?

Mr. Knowlton: Exhibit 2.

The Court: Exhibit 2, very well. [37]

Q. Has there been any lease in the records of your office—is there any later action concerning that apartment?

A. There has been no leases filed.

Q. In connection with any apartment.

A. In connection with any apartment in the Crenshaw apartments.

Mr. Bunker: You testified as to this Exhibit 2 that this was a part of your files as Rent Director?

The Witness: That is part of the files that are in my custody.

Mr. Bunker: In find that this order, Exhibit 2, on Apartment 8, is signed by H. C. Harlen, Rent Director, February 20, 1947.

The Witness: That is correct, sir.

Mr. Bunker: Pardon.

The Witness: He was Rent Director at that time.

Mr. Bunker: You didn't have anything to do with that?

The Witness: Not with the order.

Mr. Bunker: Beyond what is in your files, you don't know?

The Witness: That's right.

Mr. Bunker: Do you know Mr. Harlen's signature if you saw it?

(Testimony of Louis G. DeNayer.)

The Witness: I do.

Mr. Bunker: Will you examine Exhibit 2 and say whether or not that is his signature?

The Witness: Yes, it is Mr. Harlen's signature.

Mr. Knowlton: Offer Plaintiff's Exhibit 2 in evidence. [38]

Mr. Bunker: Objected to as not properly identified.

The Court: In what respect isn't that identified?

Mr. Bunker: In that Mr. DeNayer is Rent Director for that area, not Mr. Harlen.

The Court: Overruled.

Mr. Bunker: He has testified that at all times he was Rent Director of that area.

The Witness: No, I did not.

(Plaintiff's Exhibit 2, being Order fixing rent on Apartment 8, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit 3, would you state what that is?

A. That is an order determining the maximum rent on Apartment 9 at 6 West Babcock, Bozeman, Montana.

Q. Would you state after looking at the file in connection with Number 9, whether there was any order changing the rent that Plaintiff's Exhibit 3 fixed? A. No, there was no other order.

(Testimony of Louis G. DeNayer.)

Q. Do you recognize the signature that instrument bears?

A. It was signed by H. C. Harlen.

Q. Do you know that to be his signature?

A. I know that to be his signature.

Q. That rent has not been changed?

A. That rent has not been changed. [39]

Mr. Knowlton: I offer Plaintiff's Exhibit 3 in evidence.

Mr. Bunker: Objected to as there is no showing here that any registration of Apartment 9 was ever made or that Apartment 9 was ever under Rent Control beyond this office memorandum. Objected to as incompetent, irrelevant and immaterial.

The Court: Counsel, what authority does the Rent Director have to fix the maximum rent without the property having been registered? Is counsel's objection that the property has to be registered first, that is, there would have to be a showing the property was registered before an order establishing maximum rent could issue, isn't that right?

Mr. Knowlton: I don't believe so, your Honor. Could I see that? Registration was required to be made, if your Honor please, of the landlord's ex parte statement of what he was charging on the maximum rent date. The rent Director had the authority to issue such orders of determination of what the comparable maximum rent should be under Section 5(d) of the Regulations issued under the Emergency Price Control Act, which were the

(Testimony of Louis G. DeNayer.)

regulations in effect at the time these orders were issued. That regulation provided, "if the rent on the date determining the maximum rent, or any other fact necessary to the determination of the maximum rent, or the services, furniture, furnishings or equipment provided with the accommodations on the date determining the maximum rent, is in dispute between the landlord and the tenant, or is in doubt, or is not known, [40] the Housing Expediter, on petition of the landlord filed within thirty days after the effective date of regulation, or at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact, or determining the services, furniture, furnishings, and equipment provided with the accommodations on the date determining the maximum rent or both. If the Housing Expediter is unable to ascertain such fact, or facts, he shall enter the order on the basis of the rent which he finds was generally prevailing in the defense rental area for comparable housing accommodations on the maximum rent date and where appropriate, may determine the services, furniture, furnishings and equipment included in such rent."

The Court: The right of the Rent Director to determine the maximum rent doesn't depend upon any registration? The registration just assists him in fixing the maximum rent?

Mr. Knowlton: That is correct. Under the Emergency Price Control Act, if a landlord would

(Testimony of Louis G. DeNayer.)

refuse to register or it was impossible to get the landlord to register, the regulation tried to circumvent that, at least tried to make it easier upon the Housing Expediter and the Courts by providing for a direct order establishing rents, and where in cases, for some reason, a landlord would not register or could not register the rent or any other fact that was necessary for the determination, or maybe he didn't even know what the maximum rent was on the maximum rent date. [41]

The Court: For the Court's information, were these apartments registered or not?

Mr. Knowlton: I think they were, most of them.

Mr. Bunker: They were, yes. Everyone of them was registered. This paper purports to jump over what the original registration was, and all it shows, it is merely a subsequent order without foundation.

Mr. Knowlton: If counsel is objecting to the order or its validity, he should make some showing, which he has not done, that Mr. Crenshaw has exhausted his administrative remedies by way of appeal under the Emergency Price Control Act or the appeals as provided in this Act. There are administrative procedures allowed for any landlord that might want to appeal.

Mr. Bunker: That hasn't been shown to be issued in response to any objection. This is simply an order they placed in their files, as it appears on its face.

Mr. Knowlton: It appears on its face, I believe (interrupted).

(Testimony of Louis G. DeNayer.)

The Court: Mr. Harlen was Rent Director in Bozeman at the time of the issuance of this order?

The Witness: Yes. It shows a copy was deposited in the United States Mail at a certain time.

The Court: This was an official record of the rent Director's Office, of which you have custody?

The Witness: Yes, sir. [42]

The Court: The objection is overruled.

(Plaintiff's Exhibit 3, being Order fixing rent on Apartment 9, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit 4 for identification, will you state what that is?

A. This is an order determining the maximum rent on Apartment 12 at 6 West Babcock Street, Bozeman, Montana.

Q. What day is that order—does that order purport to be issued?

A. The order was issued February 20, 1947, and a copy of the original was deposited in the United States Mail on that date.

Q. Do you know whether, according to the records and files of the Bozeman Office, any orders changing the rent of this last mentioned apartment have been issued by the Rent Director are found in such files? A. No.

(Testimony of Louis G. DeNayer.)

The Court: There has been no change?

The Witness: No.

Mr. Bunker: May I ask a question?

The Court: Yes, proceed.

Mr. Bunker: Mr. DeNayer, this order is dated February 20th, is that correct?

The Witness: That is correct, sir.

Mr. Bunker: And the original registration was made in [43] April, one year before that, that is, in 1946. This is February 20, 1947, is that correct?

The Witness: That would show. Yes, that is correct.

Mr. Bunker: That would make it as of March 1, 1946. Why don't you have the original application registration signed by Mr. Crenshaw?

The Witness: I don't hear you?

Mr. Bunker: Why do you not have that in place of this order, which is an order by Mr. Harlen made nearly a year later?

The Witness: That is very likely one of them that is in the files on that last action we had.

Mr. Bunker: May I have an objection to the entry of all of these orders by the Area Rent Director at this time, in that they are not the best evidence; as to any offer of this type, that this type evidence offered is not the best evidence.

The Court: Hand me the exhibit.

Mr. Bunker: And in that the proper foundation for offering that evidence has not been laid.

The Court: In what particular is the foundation lacking?

(Testimony of Louis G. DeNayer.)

Mr. Bunker: In that the foundation to that order is the registration, and this order is an order made without the consent, knowledge or anything else of the defendant.

The Court: This is the official order of the Rent Director, and as such, it is admissible. Now, the registration, or any other document in connection with it is available to you, sir. [44]

Mr. Bunker: I have it, but I do not have this. That information hasn't been received by the defendant, your Honor.

The Court: But that doesn't make it inadmissible here. You can establish that if that is of any importance. You have the official registration?

Mr. Bunker: I have a copy of it.

The Court: And the original itself will be made available to you, or its absence will be explained to you. That is all you are entitled to. This is an official document. Your objection is overruled. I would advise you to make objection to each offer made.

Mr. Knowlton: I offer it in evidence.

The Court: Plaintiff's Exhibit 4 is admitted in evidence.

(Plaintiff's Exhibit 4, being Order fixing rent on Apartment 12, 6 West Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

(Testimony of Louis G. DeNayer.)

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit 5, would you examine that file and state what that purports to be, if you know?

A. This is the file concerning Apartment 14 at 6 West Babcock Street, Bozeman, Montana.

Q. Does that file indicate any order has been issued concerning that apartment?

A. No order has been issued.

Q. Calling your attention to the revised copy of the registration, [45] will you examine that, please?

A. Do you want me to explain this?

Q. Would you state whether there is anything in that file indicating any orders have been issued concerning Apartment 14?

A. Yes, the maximum rent was changed.

Q. What does the file show concerning any such change?

A. It shows the maximum rent of \$45.00 per month, furnished, was the determination of the legal maximum rent under Section 5(d).

Q. Where is that information found on that document?

A. It is found on the back of the registration statement.

Mr. Knowlton: Offer Plaintiff's Exhibit 5 in evidence.

The Court: What is the purpose of the whole file, counsel?

Mr. Knowlton: In that particular case, if your Honor please, the change is indicated on the back

(Testimony of Louis G. DeNayer.)

of the revised copy of the registration, which is one of the first papers in the file, indicating it was made at a date subsequent to the issuance of the original registration, which is also in the file.

The Court: The important matters are the registration and the change made?

Mr. Knowlton: That is correct.

The Court: Why should we clutter the files of this Court up with all the extraneous records. Segregate it and have them [46] identified.

Q. Showing you first of all Plaintiff's Exhibit 5 for identification, I will ask you what that is, if you know?

A. This is the original registration of Apartment 14 at 6 West Babcock Street, Bozeman, Montana.

The Court: Is that marked 5 or 6?

Mr. Knowlton: 5-A, I am sorry.

Q. Showing you Plaintiff's Exhibit 5, will you state what that is?

A. That is a copy of the original of the registration statement on Apartment 14 at 6 West Babcock Street in Bozeman.

Q. If you will turn over the copy, will you state what is on there?

A. This shows that an order was issued by the Rent Director determining the legal maximum rent of Apartment 14 at \$45.00 per month furnished.

Mr. Knowlton: Offer Plaintiff's Exhibits 5 and 5-A.

Mr. Bunker: No objection to 5—to 5-A. The

(Testimony of Louis G. DeNayer.)

objection to Exhibit 5 is that it is a statement wholly within the knowledge of the Rent Director and not binding upon the defendant, and is not the best evidence of any notice to him of any change of rents and there is no foundation laid for introducing this secondary evidence.

The Court: Exhibit 5-A will be admitted without objection, and Exhibit 5—Exhibit 5-A, there was no objection, is that it? [47]

Mr. Bunker: There was no objection to the last one. Yes, there is no objection to that. Exhibit 5 is the one that is objected to.

The Court: Exhibit 5-A, the last one you saw, you have no objection to that?

Mr. Bunker: No objection to that one.

The Court: Very well, it will be admitted without objection.

(Plaintiff's Exhibit 5-A, being Registration Statement on Apartment 14, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

The Court: With reference, Mr. DeNayer, to Plaintiff's Exhibit 5, this likewise is an official document in your custody?

The Witness: Yes, sir.

The Court: And it is one upon which you, as Rent Director, rely in performing your official duties?

(Testimony of Louis G. DeNayer.)

The Witness: That is true, that is a true and correct copy of the original.

The Court: The information contained therein is information upon which you act as Rent Director?

The Witness: That is true.

The Court: Very well, the objection with reference to Plaintiff's Exhibit 5 is overruled, and it is admitted in evidence.

(Plaintiff's Exhibit 5, being Order fixing rent on Apartment 14, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.) [48]

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit 6 for identification, will you state what that is, if you know?

A. This is a copy of the registration of Apartment 16 at 6 West Babcock Street, Bozeman, Montana.

Q. Does that document show any change in the rent so registered in your office?

A. Yes, it shows an order was issued by the Rent Director determining the legal maximum rent under Section 5(c) was \$40.00 per month unfurnished and \$55.00 per month furnished.

Q. Do you know of any order changing that rental on that apartment?

A. No, there is no order changing it.

(Testimony of Louis G. DeNayer.)

Mr. Bunker: Objected to as not the best evidence. It is not the original registration, it is merely a copy, no foundation having been laid for using a copy instead of an original.

Q. Is this one of the records you have used during—in your position as Area Rent Director in Bozeman? A. Yes, sir.

Q. To fix the rents? A. Yes, sir.

Q. And it is a record of your office?

A. Yes, sir.

Mr. Knowlton: I offer Plaintiff's Exhibit 6 in evidence.

Mr. Bunker: Same objection.

The Court: This is marked a duplicate, Mr. DeNayer. Where is [49] the original?

A. Is that 16? I am not sure. This must be done of the originals that was used in another case.

The Court: The original would otherwise be contained in your file?

The Witness: That is true.

The Court: But, it isn't there, and this is a true and correct copy?

The Witness: A true and correct copy certified.

The Court: The original was introduced into the Court files on a hearing on another matter?

The Witness: That's right.

Mr. Bunker: May I inquire, your Honor?

The Court: Yes.

Mr. Bunker: Where is the original, do you know, Mr. DeNayer?

(Testimony of Louis G. DeNayer.)

The Witness: It is likely in the Court files.

Mr. Bunker: That apartment has never been in question before. It is the northeast corner apartment.

The Witness: I don't know. It was taken with the files, and it must be there. That can be determined by the Court.

The Court: If it isn't in the Court files, do you know where else it is?

The Witness: It would be here in our files or in the Court files. [50]

The Court: If it is not in the Court files and your examination shows it is not in your files, you cannot otherwise explain its absence?

The Witness: That's right.

Q. (By Mr. Knowlton): Mr. DeNayer, do you know in the event that such an instrument as Exhibit 6 is lost, is that a copy of such instrument that you have in your records?

A. If it is lost?

Q. That it is a copy of the original?

A. That is a copy of the original.

Mr. Bunker: That is a self-serving declaration and is speculative entirely, and the defendant does not have to be bound by such speculation.

The Court: The defendant is not bound by any testimony of the plaintiff's witnesses.

Mr. Bunker: I understand, but we don't want any part of it.

(Testimony of Louis G. DeNayer.)

The Court: The Plaintiff's Exhibit No. 6 is an official record in your custody?

The Witness: Yes, sir.

The Court: It was made in the usual course of business of the Rent Director?

The Witness: Yes, sir.

It is a record upon which you rely in dealing with your official duties as Rent Director? [51]

The Witness: Yes, sir.

The Court: The objection is overruled.*

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit No. 7 for identification, will you state what that is?

A. This is a true and correct copy of the registration statement of Apartment 17 at 6 West Babcock, Bozeman, Montana, and it shows that an order determining the legal maximum rent (interrupted).

Mr. Bunker: I don't believe the evidence on the fact of these exhibits should be explained beforehand. Of course, I understand this is an equity case.

The Court: The Court can, of course, read the Exhibit and tell what its contents is, so you needn't read it to me. I can read it myself, Mr. DeNayer, but you can tell what the document is. Proceed.

*Plaintiff's Ex. 6, Registration Statement for Apartment 16, here received in evidence. will be certified to the Court of Appeals by the Clerk of the District Court.

(Testimony of Louis G. DeNayer.)

Q. Have you got the original copy of that registration in your files?

A. I don't know whether it is in the files here or not. Yes, the original registration statement is in the files.

Q. Will you compare the copy you have there?

A. It is Apartment 17—they are the same.

Mr. Knowlton: I will offer Plaintiff's Exhibits 7 and 7-A.

Mr. Bunker: No objection to the exhibit.

The Court: Well, did you say that Exhibit 7 is an exact duplicate of Exhibit 7-A? [52]

Mr. Knowlton: Let me take a look.

The Court: What is the purpose of offering the original and a duplicate?

Mr. Knowlton: The purpose is that the duplicate indicates a change by order on the reverse side of it.

The Witness: The duplicate was used because this one was voided for the reason that (interrupted).

Mr. Knowlton: As a matter of fact, he shows the maximum rent of \$40 charged as of the maximum rent date. He then shows he increased it to \$50 at some date after as the result of having an additional occupant. That may be a reason for the Rent Director to change it, but there is no authority any place where he can change the maximum rent by himself and because of his own statement.

The Court: The original sets forth that \$50.00 is the maximum rent?

(Testimony of Louis G. DeNayer.)

Mr. Knowlton: If your Honor will let me see this. The original shows Mr. Crenshaw rented this Apartment 17 on the maximum rent date at \$40.00 per month. He then shows that an extra person moved in there, and for that reason on February 19, 1946, he increased the rent to \$50.00. This is an ex parte statement made by Mr. Crenshaw in connection with such accommodation. A person never had authority to increase the rent otherwise applicable by reason of an extra person. In fact, he has crossed out, if your Honor will observe, an indication [53] showing from "Fully furnished to unfurnished" and inserted his own reason for increasing the rent.

The Court: Well, the Exhibit 7 is not a duplicate of 7(a)?

Mr. Knowlton: No, because 7-A was voided, if your Honor please. It is marked "voided" by the Rent Director. He couldn't accept it as establishing the maximum rent at \$50.00. The maximum rent was established at what was charged on the maximum rent date.

The Court: You are offering 7 as a duplicate of 7-A. It isn't a duplicate of 7-A. Exhibit 7-A is different and it appears on its face to be different. The point that I want to find out is why offer 7-A. What is it?

Mr. Knowlton: It is actually nothing, I don't suppose, and should not be offered at all. If your Honor please, it is a voided registration.

(Testimony of Louis G. DeNayer.)

The Court: If that is voided, what is Exhibit 7?

Mr. Knowlton: Number 7 was—the Rent Director apparently, in making up his copy, took the fact of what the rent was on the maximum rent date as reported by the landlord, set it up on his copy and voided the original registration so it wouldn't get mixed up in his files.

The Court: That is fine, if you will just have someone testify to it instead of you talking about it.

Mr. Bunker: About the difference, 7-A was the one I intended to allow. I misread, I didn't know there were two there. [54]

Q. (By Mr. Knowlton): Will you re-examine and look carefully at Exhibit 7 and 7-A, compare them as to all material respects and explain any differences, if there are any, and why they were made?

A. The rent on the maximum rent date on the original registration was \$40.00. The rent on the maximum rent date on the duplicate registration was \$40.00. Exhibit 7 was voided—or 7-A was voided by our office for the reason that the landlord added his own reasons for increasing the rent. That is not on Exhibit 7, but so far as the rent on the maximum rent date is concerned, it is the same on both copies. On the reverse side of the duplicate copy which we use in our work, as this other one was voided, there was a determination and order issued by the Rent Director determining the legal maximum rent to be \$40.00 per month, furnished, for Apartment 17.

(Testimony of Louis G. DeNayer.)

The Court: Plaintiff's Exhibit 7 is the duplicate?

The Witness: That is correct.

The Court: Could you tell me what happened to the original of that?

The Witness: We never had an original to this.

The Court: In other words, you never had an original executed by the defendant?

The Witness: Not executed by the defendant, with the exception of this one, which we voided. He was also informed any time we voided one. [55]

The Court: Exhibit 7 was made completely from the information contained in Exhibit 7-A?

The Witness: Yes, sir.

The Court: And was made by the Rent Director?

The Witness: By the Rent Director.

The Court: And Exhibit 7 is an official document under your custody as Rent Director?

The Witness: That is correct.

The Court: And was made in the usual course of business and is a record upon which you rely in performing your official duties as Rent Director?

The Witness: That is true.

Mr. Bunker: May I add the further objection, your Honor, the Exhibit 7 shows upon its face to have been signed by B. M. Crenshaw. He now states it wasn't. It isn't a copy and is of no probative value in this matter. It is a matter that is self-serving entirely.

(Testimony of Louis G. DeNayer.)

The Court: Exhibit 7 shows what the Rent Director found to be the maximum rent?

The Witness: That's right.

The Court: And includes on its reverse side an order changing that maximum rent?

The Witness: Just re-affirming what was on the face of it.

The Court: The Exhibit 7 purports to have been signed by B. M. Crenshaw. What do you have to say as to that? [56]

The Witness: That was taken from his original to show that he actually registered the rent on the maximum rent date for \$40.00. That is why the two were kept together, although that one was voided.

The Court: Very well, the objection is overruled. Exhibits 7 and 7-A are admitted.

(Plaintiff's Exhibit 7, being duplicate registration statement on Apartment 17, 6 W. Babcock St., Bozeman, Montana, and Plaintiff's Exhibit 7-A, being registration statement on Apartment 17, 6 W. Babcock St., Bozeman, Montana, here admitted in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Q. (By Mr. Knowlton): Will you look at Plaintiff's Exhibit 8 for identification?

A. This is an order determining the maximum rent on Apartment 18, 6 West Babcock Street, Bozeman, Montana.

Q. Whose signature appears there?

(Testimony of Louis G. DeNayer.)

A. H. C. Harlen.

Q. Do you know whether that is his signature?

A. That is Mr. Harlen's signature.

Q. Do you know whether any changes have been made?

A. No, no changes have been made.

The Court: Do you offer the exhibit in evidence?

Mr. Knowlton: We offer it in evidence.

Mr. Bunker: That is objected to upon the grounds and for the reason it isn't the original registration and that it is [57] not the best evidence. It is self-serving. There is no foundation laid for filing that paper in place of the original registration.

The Court: This is the original order issued by the Director?

The Witness: That is the order.

The Court: Overruled.

(Plaintiff's Exhibit 8, being order fixing rent on Apartment 18, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Q. (By Mr. Knowlton): Showing you Plaintiff's Exhibit 9, will you state what that is, if you know?

A. This is an order adjusting the maximum rent; it is a modified order adjusting the maximum rent on 6 West Babcock Street, Apartment 20.

Q. Who issued it? A. I issued it.

(Testimony of Louis G. DeNayer.)

Q. When? A. On June 26, 1947.

Q. You would be reasonably certain it was your signature on it, then? A. Yes, sir.

Q. Have you ever changed such rental?

A. From this order?

Q. Yes? A. No, sir. [58]

The Court: Do you offer the exhibit?

Mr. Knowlton: I offer Plaintiff's Exhibit No. 9 for identification.

Mr. Bunker: No objection.

The Court: Very well, it is admitted without objection.

(Plaintiff's Exhibit 9, being order adjusting maximum rent on Apartment 20, 6 W. Babcock St., Bozeman, Montana, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

The Court: Court will stand in recess until ten minutes after four.

(Recess.)

The Court: Gentlemen, in connection with Cause 373—that is the one we are trying now, isn't it?

Mr. Bunker: Yes, sir.

The Court: The Court will continue the further hearing of that case until two o'clock tomorrow afternoon. Counsel for both sides have been called by the Court into consultation in the matter in an effort to limit the issues of the case. It seems to the Court there has been, unnecessarily, a lot of the proof and a lot of the records going in, piling up a

(Testimony of Louis G. DeNayer.)

record, which will make it monetarily impossible to prosecute an appeal in case such an appeal is ever desired. It seems to me that the parties can get together on certain basic facts and submit the facts to the Court upon agreement, and the Court [59] can then try any particular issues that remain, and the trial will then be limited so we can understand and follow more easily and make a better determination. The purpose of a trial of this nature is to approximate justice, and so the parties are advised that it is their duty to get together and submit to the Court facts upon which the Court can exercise its conscience here properly, and counsel are urged to so advise their clients to get together to the point where the time of the Court and the time of everyone involved can be lessened to an appreciable extent. It will be necessary for counsel to, of course, consult with their primary witnesses and with the Rent Director, and counsel for the defendant with their client and others, and so the matter will be continued until two o'clock tomorrow afternoon. In the meantime, the Court will be available at your convenience to consult with you and further advise you on the matter, but at this time, the proceedings in this cause are adjourned and in recess until two o'clock tomorrow afternoon.

(Whereupon, the trial of this cause was recessed until 2:00 o'clock p.m., the following day, September 27, 1949, at which time the following proceedings were had:)

The Court: Very well, are we ready to proceed in 373?

STIPULATION AS TO CERTAIN
ISSUES OF THE CASE

Mr. Knowlton: Counsel have arrived at a stipulation as to some of the facts in connection with this case. I should like to read the stipulation in the record: It is stipulated [60] and agreed between the parties hereto, by their attorneys, that the maximum rent applicable to apartment 21 within the Crenshaw Apartments during the time involved in the complaint before the Court was \$50 per month. It is further agreed and stipulated that the records of the Bozeman Defense Rental Area office will show Apartment 20 was rented on the maximum rent date at \$35 per month, unfurnished; that on the 4th day of January, 1947, the Rent Director made an order finding that the rent first charged furnished was \$75; that on June 26, 1947, the Rent Director made an order reducing the rent from \$75 to \$50 per month furnished. A copy of this last order has already been introduced into the files and records of this case as Plaintiff's Exhibit No. 9.

It is further agreed that Mr. DeNayer, as Rent Director for the Bozeman Defense Rental Area under the office of Price Administration and under Mr. Tighe E. Wood, Housing Expediter, has had custody of the records of the Bozeman Defense Rental Area, and that there appears in such rec-

ords an original of an order relative to Apartment 24 in the Crenshaw Apartments, stating the maximum rent was established at \$50 per month, unfurnished; that such order further set and fixed the rent at \$65 per month furnished. This order was issued February 10, 1947.

Mr. DeNayer will further testify that there appears in the records an original of the order relative to Apartment No. [61] 36 in the Crenshaw Apartments stating that the maximum rent was established at \$30 unfurnished, and that such order further set and fixed the rent at \$40 per month, furnished. This order was issued February 20, 1947.

Those records would further show that there appears in such record an original of order relative to Apartment 37 in the Crenshaw Apartments stating the maximum rent was established at \$35 per month, unfurnished. Such order further set and fixed the rent at \$40 per month, furnished. This order was issued February 20, 1947.

It is further agreed and stipulated that there appears in the records of the Bozeman office original order relative to Apartment 48 in the Crenshaw Apartments stating that the maximum rent applicable to such apartment was set at \$15 per month furnished by such order and that such order was issued on January 6, 1947.

It is further stipulated and agreed between the parties that no orders affecting such maximum rentals were ever thereafter made by the Rent Director.

That it further appears in each of these orders referred to by this stipulation and on the face of such orders that copies thereof were deposited in the United States mail on or about the date they were issued.

It is further stipulated that the accommodations here involved, located at 6 West Babcock Street in the City of Bozeman, [62] Montana, is within the Bozeman Defense Rental area, and as such is subject to the rules and regulations of the Housing and Rent Act and Rules and regulations issued thereunder. That is the stipulation we agreed to, is that correct, Mr. Bunker?

Mr. Bunker: That is correct.

LOUIS G. DeNAYER

resumed the witness stand.

Direct Examination
(Continued)

By Mr. Knowlton:

Q. Now, relative to the orders you certified here in Court yesterday, can you state whether or not any administrative appeal was taken from such orders?

A. No, there was no administrative appeal taken from those orders or from any orders issued on the Crenshaw Apartments.

Q. Mr. DeNayer, is there any petitions relative to the changing or raising of rents on these apartments on file now in the office at Bozeman?

(Testimony of Louis G. DeNayer.)

A. Yes, there are.

Q. Approximately when were they made, sir?

A. Within the last two weeks.

Q. Now, prior to this instance in which petitions were filed in your office in the last two weeks, had Mr. Crenshaw, prior to the time of this last instance filed any petition for change in rents?

A. Yes, he did file some petitions. [63]

Q. Do you recall when such petitions were filed?

A. They were processed approximately in June of 1946.

Q. Between 1946 and the last two weeks, have any petitions relative to the Crenshaw Apartments been filed?

A. No, no others have been filed.

Q. Yesterday you testified you yourself issued an order in June, 1947, is that not correct?

A. That is correct.

Q. Do you know whether this order was mailed to Mr. Crenshaw, or not?

A. Yes, it was mailed.

Q. What was your usual procedure for such mailing?

A. Well, we just put them in the regular mail, usually, unless there is something that we want to be sure is delivered. That is the usual procedure.

Q. In other words, your regulations that you operate under require you to deposit copies of orders in the mail, is that correct?

A. That is correct.

Q. In the regular mail is your usual procedure?

(Testimony of Louis G. DeNayer.)

A. Regular mail is our usual procedure.

Q. How was the order you sent to Mr. Crenshaw in 1947 sent?

A. I registered those orders.

Q. Why did you send it by registered mail?

A. I sent out a proposal of what I was going to do and I [64] didn't get any reply, so I wanted to be sure they were delivered.

Q. To whom do you ordinarily and usually send copies of orders you make?

A. To the landlords and the tenants.

Q. Showing you Plaintiff's Exhibit 10 for identification, will you state what that is, if you know?

A. It is a registered letter from the office in Bozeman addressed to B. M. Crenshaw, 6 West Babcock Street, Bozeman, Montana.

Q. How do you happen to have such instrument?

A. It was returned to our office as unclaimed.

Q. Does the letter indicate when it was mailed by post mark or otherwise?

A. June 26, 1947.

Q. What did such letter contain?

A. It contained the orders referred to that were made out on June 27, 1947.

Q. Where has that instrument been since June 26, 1947?

A. It has been in the files in the Bozeman office.

Mr. Bunker: It is objected to upon the grounds (interrupted).

(Testimony of Louis G. DeNayer.)

Mr. Knowlton: I didn't offer it yet. At this time I should like to offer Plaintiff's Exhibit 10 in evidence.

The Court: Any objections? [65]

Mr. Bunker: Objected to upon the ground and for the reason that the Exhibit doesn't show any attempted delivery beyond the unclaimed statement, a statement, of unclaimed by checking the face of that. It doesn't show it was ever attempted to be delivered to Mr. Crenshaw.

The Court: This was registered and deposited in the mail?

The Witness: Yes.

The Court: And returned to you by the mail?

The Witness: Yes.

The Court: Objection is overruled.

(Plaintiff's Exhibit 10, being envelope and contents, addressed to B. M. Crenshaw, 6 West Babcock, Bozeman, Montana, and bearing Registered No. 6294, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.)

Mr. Knowlton: You may inquire, Mr. Bunker.

Cross-Examination

By Mr. Bunker:

Q. On the petition filed by Mr. Crenshaw shortly after the original registration which you testified to, it was requested that certain apartments be changed to certain rents, is that correct?

(Testimony of Louis G. DeNayer.)

A. That is true.

Q. And all of them, without exception, were refused? A. I believe that is true. [66]

Q. That's right, and thereafter, at various times, upon your own motion, or the motion of your local area Rent Director, there were various changes made in rentals, is that correct?

The Court: I didn't hear the question, Mr. Bunker.

Q. Thereafter, at intervals, and either by yourself, or by the area Rent Director located in Bozeman, there were various changes in rents of the different apartments made, is that correct?

A. By order you mean?

Q. Yes.

A. No, there was no changes made.

Q. Isn't it a fact that without petition or order or anything else, Apartment 14 was changed from \$35 to \$45?

A. I would have to look at the record to see that. We had about 4,000 of them, so I would have to see it.

Q. Isn't it a fact—just take it generally—that you changed all of them from around \$35 to \$65, \$75 and \$40, isn't that a fact?

A. All over the town, you mean?

Q. Right in that building.

A. You mean on your petition?

Q. No, on your own initiative.

A. On the Director's initiative, that is true.

(Testimony of Louis G. DeNayer.)

Q. You made a number of changes? [67]

A. Yes, but not on petition.

Q. Did you ever send any notices on those?

A. Yes, we have sent notices.

Q. You sent notices out? A. Yes.

Q. Were they delivered?

A. I wouldn't have any way of knowing.

Q. Isn't it a fact that certain ones of those apartments went up as high as \$75?

A. On our orders, you mean?

Q. Yes.

A. I think so, yes, I believe there was one.

Q. Number 20, Apartment Number 20?

A. I would have to look at the record to be sure of that.

Q. That is in the evidence. It has been stipulated to that effect. Now, do you know those apartments, do you know what they are like?

A. I was in them once.

Q. Isn't it a fact that practically all apartments, with the exception of the five-room apartments, are exactly alike?

A. I didn't go through all of them.

Q. Don't you know that from your investigators?

A. From the record, it would indicate they are about the same size.

Q. And the same accommodations? [68]

A. That's right.

Q. So that you had variously changed them

(Testimony of Louis G. DeNayer.)

from anywhere from \$40 to \$75 per month per apartment without reason?

Mr. Knowlton: I should like to object to that question. Mr. DeNayer has testified this defendant has made no administrative appeal from any of these orders. Mr. Crenshaw, if he is aggrieved by those orders, has the right of administrative appeal. As a matter of fact, all the orders were issued under the Emergency Price Control Act. Under that Act, he had a procedure for appealing. The Emergency Price Control Act gave exclusive jurisdiction to the emergency court of appeals to hear such matters. The questions now being directed to this man go to the wisdom of these orders. He is in the wrong place now to question these orders.

The Court: What is your position, Mr. Bunker. That is the way I view it, as stated by counsel. It seems to me we are not trying here the right or wrong of the order. The order has been made.

Mr. Bunker: I am not going to that point, your Honor. My point is this, and it will be this during the whole trial: That the Office of Price Administration, as operated in Bozeman, Montana, was a vicious attack on Mr. Crenshaw, and that these various rentals without notice are such as to mislead Mr. Crenshaw. They are all identical apartments.

The Court: First, you have two different propositions there, [69] Mr. Bunker. Your intimation

(Testimony of Louis G. DeNayer.)

that the Office of Price Administration in Bozeman was a vicious attempt to harass the defendant has no place in this action that I can see. In other words, the only way that they could harass him would be by issuing orders arbitrarily. Your place for attacking arbitrary orders is provided in the Act for appeal, administrative appeal. Is that not so?

Mr. Bunker: No, your Honor. The answer to that is this: In the \$65 rate, when Mr. Crenshaw went to this man and said, "You can't have this," he produced an order showing that he was permitted to have it at \$65. That was one of the poorer average apartments, and upon that, Mr. Crenshaw depended that he was permitted to charge the same for the other apartments of a like character, and proceeded on that theory.

The Court: Well, of course, he may have felt that way, and you can introduce testimony to the effect that he did receive an order authorizing him to charge \$65 for one apartment, but that doesn't, that has no bearing as to whether or not the office of the rent control was a vicious administration designed to harass the defendant.

Mr. Bunker: It would be in this, your Honor: Not that they reduced the rent, but that they reduced it after having raised it and it came to his knowledge.

The Court: The office of rent control, like every other [70] office, made, no doubt, many mistakes,

(Testimony of Louis G. DeNayer.)

did a lot of things that were wrong, and among those wrongs, it may have been they raised rents too high, they set maximum rents that were too high or too low, and may have, in one apartment, set rent too high or too low, and they may have made a half a dozen changes, and the rent that is now on that apartment may be, as far as you and I are concerned, wrong, but the fact remains, they made an order, and they were authorized to make that order. If the order was wrong, if it wasn't justified, doesn't the Act provide for a method of attacking that?

Mr. Bunker: It does, but unless he had notice, he couldn't attack it.

The Court: Your only problem then, the only thing you are interested in, is whether or not he had notice?

Mr. Bunker: That is correct.

The Court: That has nothing to do with the viciousness of the administration.

Mr. Bunker: We want to find out from Mr. DeNayer, if he can tell us, why these apartments were placed in different categories without reason.

The Court: I have stated to you once that it doesn't make any difference.

Mr. Bunker: If he has notice of one at \$65 (interrupted).

The Court: That may or may not have been right, and the administrator could change that, couldn't he? [71]

(Testimony of Louis G. DeNayer.)

Mr. Bunker: But, he didn't change that one.

The Court: But it doesn't mean he couldn't change it at any subsequent time.

Mr. Bunker: I presume.

The Court: Of course, he is supposed to, under the Act, he is supposed to act with discretion. He is not supposed to act arbitrarily, but the place to attack that is not here, is it?

Mr. Bunker: I think it is when he bases his act on an order they issued. The question arises under that law that was in in 1947. That was supposed to be administered fairly and impartially, both as to tenant and landlord. We are showing it wasn't.

The Court: If the landlord felt the rental fixed by the Rent Director was not fair, didn't the Act provide for a method of attacking it?

Mr. Bunker: Yes, if he knew.

The Court: Well, if he knew, then he had a method to attack it. If he didn't know, then, he is not bound by it, I suppose.

Mr. Bunker: That's right.

The Court: Why bother going into it?

Mr. Bunker: He does know there are apartments renting at \$65. He has, therefore, the right to believe that the rest of them are \$65. [72]

Mr. Knowlton: The question was an attack on the validity of the order, and I objected to his question in which he purported to attack the order.

The Court: The Court will sustain the objection.

(Testimony of Louis G. DeNayer.)

Q. Will you tell us, Mr. DeNayer, why various apartments run from \$40 to \$65 at the present time? A. That is based on the order.

Q. I am asking as to your discretion. Why, in your discretion, you did make those various apartments different?

A. We usually made changes like that on comparability.

Q. Very well, then, did you know whether apartments 14, 37, 9, 1, 4 and 12 are exactly alike?

A. I can tell by looking at the records so far as the rooms are concerned.

Q. Would you do that, Mr. DeNayer?

A. Do you want me to look at the records?

Mr. Knowlton: Which others (handing files to witness)?

Mr. Bunker: I would like 20 and 12 in there.

A. No. 24 and 9 are registered as 4-room apartments, furnished, with the heat or heating fuel furnished and cold and hot water furnished. Those two are the same. Numbers 12, 14 and 20 are registered as 4-room apartments, unfurnished, with the same services. Number 37 is registered as two rooms, furnished, with everything furnished with the exception of the garage. [73]

Q. And would you give us number 20?

A. Number 20 is four rooms, unfurnished. I gave you that.

Q. And these apartments, many of them, were later changed because they were furnished.

(Testimony of Louis G. DeNayer.)

A. I don't know. I had very little cooperation from you or Mr. Crenshaw letting us know about anything or petitioning.

Q. As a matter of fact, the petitions showed many of these apartments were furnished. The registration was as of 1945. In 1946 the petitions showed that they were furnished, isn't that right?

A. Number 12, were you referring to?

Q. That is one of them.

Mr. Knowlton: I think Mr. Bunker is referring to the petitions Mr. Crenshaw made immediately after the registrations.

A. Our investigator found that they had not been furnished at the time those petitions were filed, but were still being rented unfurnished, with merely a statement that it was going to be the policy to change to furnished after the tenant had left and before it would be rented to a new tenant.

Q. As a matter of fact, don't those books show that nearly half of them had been furnished since 1945, since March 1st, I think, the registration?

A. March 1, 1946, you mean?

Q. No, I mean the maximum rent date? [74]

A. No. In our investigations, our inspector went over there and made several investigations until Mr. Crenshaw threw him out, and then we didn't go back any more, but if we wanted to know something, we would contact the tenants by telephone. You advised me yourself not to go over there, Mr. Bunker.

(Testimony of Louis G. DeNayer.)

The Court: You mean not to go over there to make inspections?

The Witness: That's right, that I might get hurt.

The Court: Do you mean to tell me that counsel for the defendant here advised you not to go to the apartments because you might get hurt in the performance of your official duties?

The Witness: That is true.

The Court: This is an awful case to me, proceed.

Mr. Bunker: That was for his own good, your Honor.

The Court: Yes, it is going to be for somebody's good. The Court's not going to stand for that sort of thing to be done. If an officer of the government cannot perform his duty, the Court will find out about it.

Q. You haven't answered my question, Mr. DeNayer.

A. What was your question, Mr. Bunker?

Q. I am asking it again. Why is there a variance of from \$40 to \$75?

A. That is the rent charged on the maximum rent date. On July 1, 1945, on Apartment 12, the maximum rent charged was \$50; on Apartment 14, on the maximum rent date, the rent charged was \$35; on Apartment 20, \$35; on Apartment 24, on the maximum rent date, \$50; on Apartment 9, \$35; on Apartment 37 on the maximum rent date as registered, it was \$45. Those were the rents that could be collected.

(Testimony of Louis G. DeNayer.)

Q. Then, later you made orders raising 14 to \$45, is that correct? A. That is true.

Q. And you raised \$37 to \$50?

A. That is true. I better check these before I say that is true, but you know that, that is in the stipulation, isn't that right?

Q. Yes, it comes from the stipulation. To \$50, is that correct? A. All right.

Q. No. 1 was raised to \$50, isn't that right? According to the stipulation you raised No. 20 to \$75, and then later reduced it to \$50 or \$55?

A. Yes, it was too high.

Q. Is that true?

A. That is true, it was too high.

Q. And you raised 12 to \$65, isn't that right?

A. Isn't that the stipulation?

Q. That is the stipulation? A. Yes.

Q. Do you know whether there is any difference in those apartments or not? [76]

A. I wouldn't know unless I would go and look at them.

Q. Your investigators, however, did see them in the first instance?

A. In the first instance he looked at some of them. Then, there was supposed to have been a baseball bat that he was going to get in the head.

Q. I think you misstated to the Court what hap-

(Testimony of Louis G. DeNayer.)

pened. Your investigators didn't come in to see what the apartments were when they were thrown out. They came in bothering and annoying tenants who didn't want to see them.

A. There wasn't a tenant ever told our investigators they were bothering them.

Q. We will make proof of that, Mr. DeNayer.

The Court: Counsel will not argue with the witness. You can question him, but your statements are not evidence at this point. You can take the stand if you are so advised.

Q. At the time I told you you would do well to stay away from the Crenshaw premises, I told you for the purposes and in the manner it was being done, you had better stay away?

A. You told me I was taking a chance of being killed if I went over there, or attacked.

Q. And I told you why, didn't I, at that time?

A. You probably gave me a reason. I don't recall what it was, but all I know, you told me if I went over there, I might be killed. [77]

Q. I told you you would be thrown out.

A. Or attacked. You made it stronger than that.

Q. From your investigation of the registrations, isn't it a fact that the differences between these various apartments are nothing; except as to 1 and 24, which are larger apartments, they are all exactly alike, except 1 and 24, except 37?

A. They are all registered as four rooms, with the exception of 37.

(Testimony of Louis G. DeNayer.)

Q. And they are all practically identical?

A. Sir?

Q. They are all practically identical, except 1, 24 and 37, with the exception of being registered as being furnished or unfurnished, so far as the registration is concerned? A. Yes.

Q. Yes, then I am asking if you have any reason to give us at all why furnished 20 went up to \$75, 12 went up to \$65 and 24 went up to \$65?

A. As a reason? I wouldn't know unless I would look at the complete docket. It was probably on comparability that we adjusted it.

Q. If they are identical, would it be on comparability?

A. Sometimes it would. In the case of the 1946 law, we were not allowed to increase rents to equalize them in a building. There were certain reasons that we could raise the [78] rent for, but that was not one of them at that time. Now, it is true that we can do that under the present rent Act.

Q. Then, your raises would not be on the basis of comparability?

A. Some of them might be if they were lower than comparable rents in other apartment houses.

The Court: Mr. Bunker, do you intend to go into all the facts and circumstances that went into the determination of the order of the Rent Director as to each apartment?

Mr. Bunker: I am trying to give him an opportunity of showing the basis for these changes.

(Testimony of Louis G. DeNayer.)

Mr. Knowlton: My objection was sustained made to that line of questioning.

The Court: I don't see what the point is of going into what was behind the order in each particular case, because the Act itself set up an administrative method for the landlord to attack that order. If the rent of \$65 on Apartment 24 was too low, the landlord could attack that order.

Mr. Bunker: Surely.

The Court: And if it was too high, he would let it go, I suppose, so why bother going into it.

Mr. Bunker: For the reason that the 1941 law, or the 1946 law and the 1949 law all are based upon the premises that this Act is for the protection of both landlord and tenant. The landlord here hasn't been given that protection, and I am [79] trying to find out why.

The Court: You are not going to try in this case the validity of each particular order.

Mr. Bunker: I am trying to get at the comparability of these orders and see why they are not comparable.

The Court: What difference does it make? If the Rent Director was wrong in making the order, does that change the fact there was an order?

Mr. Bunker: No.

The Court: Does that change the fact the landlord was bound by the order?

Mr. Bunker: It goes to the good faith of the landlord.

(Testimony of Louis G. DeNayer.)

The Court: The good faith in not obeying the order?

Mr. Bunker: No, in doing what he believed to be correct.

The Court: Of course, he may have good faith. He may have thought the law was unconstitutional and he didn't have to obey it.

Mr. Bunker: He was misled, your Honor, that is what we are attempting to show.

The Court: Do you have any authority to present to the Court for my consideration of this proposition of yours in this case?

Mr. Peterson: May it please the Court, may I suggest to the Court that besides the technical feature of this case, or the overcharge based upon an order, that the plaintiff has come in here and asked for certain equitable relief, and that [80] the injunctive relief asks for this Court to fix the rents at a certain price. Now, on the theory, on the principle——(interrupted)

The Court: The Court isn't asked to fix the rents, is it?

Mr. Peterson: The plaintiff is asking for an injunction in here. And on the principle that he who seeks equity must do equity, we felt before the Court should grant injunctive relief in saying the rent must be so and so, that we have a right to show the comparable features of the case. In other words, if there are equities here, we feel that the Court should understand them.

(Testimony of Louis G. DeNayer.)

The Court: Of course, I can understand that the Rent Director may have made orders which don't bear up under scrutiny as to comparability, but that doesn't change the fact there was an order, and that the landlord was bound by the order at that time until the order was changed, and he had an opportunity to change it. Now, is it contended that he was denied that opportunity?

Mr. Bunker: Yes, your Honor, it is, in that he never received notices of any changes, except once for one \$65 and one \$75 from the tenants, and not from the Office of Price Administration.

The Court: It is just a question of notice. Limit it to that. Limit it to his failure to get notice. I don't know whether it is necessary or not under the Act. [81]

Mr. Bunker: It is my opinion it is.

The Court: Do you have a copy of the Act? What does the Act say, Mr. Knowlton, with reference to the requirement of giving notice?

Mr. Knowlton: The requirement is that notice be given, that notice be mailed to the landlords and the tenants. In any event, notices have been given, Mr. DeNayer has testified. As a matter of fact, that is controlled by procedural regulation providing how the Rent Director shall act.

The Court: The landlord must be notified, and the Rent Director is by regulation required to mail him a notice. Now, if the Rent Director didn't mail him a notice, go into that matter. Why go

(Testimony of Louis G. DeNayer.)

into the question as to how he happened to make the determination with to Apartment A or with reference to Apartment B. If he made the determination, the question is dead. The question is, did he notify the defendant?

Mr. Bunker: The defendant has received through the tenants and not otherwise, two notices, one for \$75 and one for \$65. Those notices he had notice of. He had no notice of any others. I am trying to find out why, if he received those through tenants, and there were other orders made, they weren't the same.

The Court: It doesn't make any difference whether they were the same or not. The Court is ruling on that. Let's proceed from that point.

Q. (By Mr. Bunker): Now, Mr. DeNayer, you stated these notices were mailed out?

A. The notices were mailed out.

Q. By whom?

A. By either the girl in the office or myself.

Q. Do you find any there shown to be mailed out by yourself? I want an order showing you mailed it, any order.

A. These orders were mailed on February 20, 1947, both of them—one of them by Betty Walton, who was Clerk at the time, and one of them 6/26/47 by the same girl in the office.

Q. In other words, you are testifying they were mailed because someone else's initials were on them, is that right? You were not present?

(Testimony of Louis G. DeNayer.)

A. That is what the order shows.

Q. You were not present?

A. I didn't drop them in the mail box, which is not required.

Q. You didn't supervise the mailing?

A. No.

Q. Nor of any of them? A. What?

Q. You didn't supervise the mailing of any of them? A. No.

Q. So your statement is pure hearsay, isn't that correct, what someone else has told you? [83]

A. No, it is on the order. It was deposited in the United States Mail by a certain person who initials the order.

Q. That is what somebody else said, Mr. DeNayer? A. That is what is on the order.

Q. Now, there were petitions filed, some about two weeks ago, or 10 days ago, something of that nature?

A. He filed petitions approximately two weeks ago, a little over, probably.

Q. They were filed right after our conference in Missoula? A. Shortly after that.

Q. Upon an agreement among us as to what we felt (interrupted).

The Court: What is the purpose of this testimony?

Mr. Bunker: He brought it out, your Honor, on direct examination.

The Court: What is the purpose of it, what do you want to inquire about?

(Testimony of Louis G. DeNayer.)

Mr. Bunker: To show we were in agreement, defendant's and plaintiff's attorney and the administrator, as to what the actual value of these rooms is.

The Court: Overruled. You will refrain from going into any further questioning along that line.

Mr. Bunker: That is all.

Mr. Knowlton: I have no questions. I should like to ask the Court at this time if I can't dismiss Mr. DeNayer from [84] further attendance in this cause.

The Court: It doesn't appear to me there is any necessity for him to be here further.

Mr. Knowlton: He will be here tonight until 10:30, but he wants very much to catch a plane.

The Court: Does the stipulation you entered into with reference to the various orders that were made, does that stipulation have any reference to what the record shows with reference to them having been mailed at the time.

Mr. Knowlton: The stipulation was to the effect that on the fact of the orders mentioned in such stipulation, it shows those orders were mailed to the defendant and deposited in the United States Mail.

The Court: Very well, Court has no reason to hold Mr. DeNayer then.

(Witness excused.)

(Five-minute recess.)

B. M. CRENSHAW

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Knowlton:

Q. State your name, please?

A. B. M. Crenshaw.

Q. You are the defendant in this case? [85]

A. Yes, sir.

Q. Where do you reside, sir?

A. 6 West Babcock.

Q. That is in Bozeman? A. Yes.

Q. How long have you resided there?

A. Since 1937, December 10, 1937.

Q. You have lived there since?

A. Yes, sir.

Q. Do you recall about last September 7th, last year, 1948, answering certain requests for admissions propounded to you by the plaintiff?

A. How is that?

Q. Do you recall answering certain requests for admissions on the 7th of September, 1948?

A. Admissions?

Mr. Knowlton: If your Honor please, if I may have the answers to the requests for admissions.

Q. These are the amended reply to requests for admissions which your attorney filed in your behalf, and which you swore to. Is that not correct?

A. That is my signature.

(Testimony of B. M. Crenshaw.)

Q. Now, you have that copy before you?

A. Yes, sir.

Q. Will you turn to page 2 of such reply. Your answer to [86] Request No. 6 is on that page. In your answer, you admit that Mrs. John Durham occupied Apartment 1 from September 1, 1947, to June 1, 1948. Then, you deny that such tenant paid the sum of \$100 a month rent from September 1, 1947, to March 1, 1948, and you also deny said tenant paid \$85 a month rent from March 1 to June 1, 1948.

A. I give him extra service.

Q. That is what you state there, that you denied collecting that as rent. You admit he was there during the period, but you deny collecting that rent, is that right? What rent did you collect from him?

A. I put in an extra bed for his boy, and he paid every two weeks. He wanted it by the week. He was looking for a house. He wanted it by the week, so I rented it to him for \$50 for every two weeks.

Q. Then, did you take \$50 every month during that time? A. \$50 every two weeks.

Mr. Bunker: This is objected to as not proper direct examination. If he has called this witness as he has, it is direct examination, and he has now started in on cross-examination, and it is improper direct examination. It is argumentative and it is improper examination.

(Testimony of B. M. Crenshaw.)

The Court: Overruled.

Q. I am just trying to get straightened out, Mr. Crenshaw. Did you collect during the entire period \$50 a week from him? [87] A. No.

Q. You collected \$50 when he first went in there? A. \$50 every two weeks.

Q. But you collected that \$50 every two weeks during the entire period you said he was in there?

A. Not the entire period.

Q. When did you quit?

A. I don't know. After he was in there about so long, he was slower finding a house than he thought. I reduced it to \$85. It is a two-bedroom apartment. I reduced it to \$85.

Q. You originally collected \$50 every two weeks. Did you ever reduce it to \$85 a month?

A. All his receipts is \$42.50 every two weeks. Then, when he found a house, he wouldn't have only \$42.50 to pay.

Q. You collected that for the balance of his term, is that correct? A. Yes, sir.

The Court: Before you leave—are you leaving this item now, counsel?

Mr. Knowlton: Yes, is there some further question the Court would like?

The Court: You collected \$50 every two weeks from Mrs. Durham from September 1, 1947, until when?

The Witness: I wouldn't know, your Honor, just exactly when. He should show it there. [88]

The Court: When you made your denial, you

(Testimony of B. M. Crenshaw.)

were just denying that you collected money by the month, is that it?

The Witness: That is correct.

The Court: It was just based upon the month part, and not that you didn't collect the money?

The Witness: He wanted it, your Honor, every two weeks. If he found a house, he could move and not have to pay a month's rent.

The Court: So your denial here, when you say you deny that the tenant paid \$100 a month, you just mean he didn't pay you by the month?

The Witness: Yes, sir.

The Court: You don't mean he didn't pay you \$100 every month?

The Witness: You can figure it any way you want.

The Court: He did pay you \$50 every two weeks, which is more than \$100 a month?

The Witness: Yes, sir, he wanted (interrupted).

The Court: Very well, that is all, proceed to the next item.

Q. (By Mr. Knowlton): If you will read your request 9 found on page 2 of that instrument you have before you?

A. I can't see it very good.

Q. You admit that Victor B. Barkley occupied Apartment 8 from April 8th to June 1, 1948, and deny that during each and every month of said period, said tenant paid \$75 a month as rental. In other words, you admit he was there from April

(Testimony of B. M. Crenshaw.)

8th to June [89] 1st, but deny that you collected \$75 a month. What did you collect?

A. I would have to figure it up; he owes me \$100.

Q. Why does he owe you?

A. He left without paying his rent.

Q. How long was he there?

A. I wouldn't know.

Q. Did you collect \$75 while he was there?

A. Yes.

The Court: You collected \$75 a month while he was there?

The Witness: Yes, sir, I gave him extra service he wanted.

Q. Why did you deny in your answer to the requests for admissions that you collected \$75 a month?

Mr. Bunker: Just a minute, your Honor. He was asked if he collected as rent—the question asked under Number 9 was \$75 a month for the use and occupancy of Apartment 8. He wasn't asked if he collected \$75 a month. That is what he is trying right now to say. Let him say so.

Q. He paid \$75 during the period, you admit that. What did you get the \$75 for?

A. For extra service I gave him. I put in an extra bed.

Q. Did you ever apply to the Rent Office to allow you to increase the rent for extra service?

A. No, sir.

(Testimony of B. M. Crenshaw.)

The Court: He did pay \$75 a month as rent for the apartment? [90]

The Witness: He owes me \$100 yet, your Honor.

The Court: You charged him \$75 a month for the apartment?

The Witness: Yes, with extra service.

The Court: I don't see why we want to quibble about these things. The Court is here to do justice. Let's not quibble about it, let's get down to business and tell the truth right from the star. You will get along better that way.

Q. (By Mr. Knowlton): I will read you your answer to Number 5. You admit that Mrs. J. M. Ashmore occupied Apartment 8 from March 6, 1948, to June 1, 1948. You deny you charged her \$75 per month as rental.

The Witness: Your Honor, she wasn't in Apartment 8.

The Court: Well, you say she was. You say she was in your answer. You have read that, haven't you?

Mr. Knowlton: As a matter of fact, she was not. The request asked him to admit that she was in 9. I think it is a typographical error on defendant's part.

The Court: Did she occupy Apartment 9?

The Witness: Yes, sir.

Q. She occupied Apartment 9 between those periods of time, isn't that you meant to say?

A. I wouldn't know the period of time.

Q. You admit, you already said during that

(Testimony of B. M. Crenshaw.)

period of time, Victor B. Barkley occupied that apartment? A. I didn't read that. [91]

The Court: He has admitted she occupied apartment 9 instead of 8——

The Witness: And 37 part of the time.

The Court: ——from March 6, 1948, to June 1, 1948.

The Witness: And 37 part of the time. I don't want to leave a thing out, I want everything in there.

Q. (By Mr. Knowlton): You deny, however, you charged her \$75 per month as rental for Apartment 9. What I would like to know is how much you did charge her as rent?

A. She had a little boy. I had to put a baby crib in there.

Q. Did you charge her \$75 a month?

A. For use of the apartment and extra service.

Q. Did you apply to the rent office for an increase by reason of putting in such service?

A. No, sir.

Q. In your answer to Request Number 18, you state as follows, I will read it to you: Admits that Mr. and Mrs. M. C. Davies occupied Apartment 12, Crenshaw Apartments, from June 1, 1947, to June 1, 1948, and you deny that each and every month said tenants paid the sum of \$75 as rent for said Apartment 12. What I would like to know is during that period, how much rent did you collect from Mr. and Mrs. Davies?

(Testimony of B. M. Crenshaw.)

A. I wouldn't know. I put in a bed there for their daughter. That was extra service.

Q. I understand, but what did you charge them?

A. \$75.00.

Q. Now, Mr. Crenshaw, in answer to Request Number 3, which is found on page 2, you admit that Major L. W. Konecki was a tenant in Apartment 14 from November 1, 1947, to June 1, 1948, and you deny you charged said tenant \$75 per month for each and every month during that period. What did you charge him during that period?

A. For the taking out the furniture that was in there and putting his in, and the rent was \$75.

The Court: Which item was that?

Mr. Knowlton: It is Apartment 14, Item 3, page 2 of Mr. Crenshaw's answers to the requests.

The Court: Did you collect \$75 per month from the tenant in Apartment 14 between the months, between November 1, 1947, and June 1, 1948, did you collect \$75 a month?

The Witness: For the apartment and storage of my furniture that I took out and he replaced it with his.

Q. (By Mr. Knowlton): Did you ever apply to the Rent Office for an increase by reason of such extra service?

A. I didn't know you had to.

Q. In connection with Request Number 13, and the answer thereto, which is found on page 3 of the answers, you admit in answer to that request that Mr. and Mrs. John Vallee occupied Apart-

(Testimony of B. M. Crenshaw.)

ment 16 from August 20, 1947, to June 1, 1948. However, you deny that for each and every month of said period [93] the said tenants paid the sum of \$75 per month except in the month of March, 1948. You admitted you collected the sum of \$55 for the month of March. I will ask you about those months except the month of March. How much did you collect from Mr. and Mrs. Vallee?

A. I wouldn't know.

Q. You don't remember?

A. No, I put in a bed for the little girl if they paid \$55 for the first month.

Q. You admit they paid \$55 for the month of March, which was right in the middle of the term.

A. They lived in 20 and moved to 21 and then to 16.

Q. How much did you collect from them while they were there, except for the Month of March, 1948?

A. With extra service, it was \$75.

Q. What was the extra service?

A. They had a little girl about 8 or 10 years old. I had to put a bed in the bedroom for her.

Q. Did you ever petition the Rent Office for an increase in rent?

A. I didn't know you had to.

The Court: Was the little girl with them when they moved into the apartment?

The Witness: They had a 4-room apartment, and when a 2-bedroom apartment was available, I

(Testimony of B. M. Crenshaw.)

thought so much of them, I [94] let them have a 2-bedroom apartment.

The Court: The extra service was permitting the little girl to live there?

The Witness: The extra service was putting in this bed in the 4-room apartment and the 2-bedroom apartment.

The Court: What were you charging for that apartment without extra service?

The Witness: \$65.

The Court: \$10 for the use of the bed a month?

The Witness: Yes, sir.

Q. (By Mr. Knowlton): In answer to Request Number 8, which is found on Page 2, you have admitted that R. H. Henke occupied Apartment 17 from September 1, 1947, to June 1, 1948. However, you deny that said tenant paid the sum of \$55 per month for the use of such apartment. How much did you collect from Mr. Henke for the use of that apartment?

A. I took out my furniture, and he put his furniture in. I charged him \$55 a month. I had to store my furniture.

The Court: Which item, counsel?

Mr. Knowlton: Answer to Request 8 on page 2, if the Court please, with reference to Apartment 17.

The Court: Very well. What was the extra charge for in this case?

The Witness: Storage. He wanted to use his

(Testimony of B. M. Crenshaw.)

davenport and chairs. I had to take mine out and store them. [95]

The Court: How much was the storage?

The Witness: \$5.

The Court: \$5 a month for the storage of a davenport?

The Witness: And two chairs.

The Court: How many chairs?

The Witness: Two.

The Court: Two chairs and a davenport, \$5 a month?

The Witness: Yes, sir.

Q. (By Mr. Knowlton): Now, in response to Request No. 18—I am sorry, Request No. 15, you admit Mr. and Mrs. E. A. Wilson occupied Apartment 18 in the Crenshaw Apartments from April 15, 1948, to June 1, 1948. You deny they paid \$75 per month for the use and occupancy for said apartment 18. If you didn't collect \$75, what did you collect for that apartment?

A. There was the same thing. She wanted a 5-room dresser drawer in there to put extra clothes in. The \$65 I was supposed to get and \$10 extra would take care of the labor and use of it.

Q. You gave them what?

A. A daveno or something, 5 drawers to put clothes in it. I don't know what you call it, a dresser or something.

Q. In answer to Request Number 10, you state you admit that Joseph D. O'Neill occupied Apartment 20, Crenshaw Apartments, from January 15,

(Testimony of B. M. Crenshaw.)

1948, to June 1, 1948. You deny that said [96] tenant paid the sum of \$75 as rental. If you didn't collect \$75, what did you collect?

A. He had an order there for \$75.

Q. You collected \$75 then? A. Yes, sir.

Q. Why did you deny it?

A. I don't know.

Q. You swore to those answers to the requests for admissions, you know. In response to Request 12, you stated—that is on page 3—that Mr. and Mrs. John Vallee occupied Apartment 21 from some time in November, 1946, to August 20, 1947, and you deny that said tenants paid the sum of \$75 per month as rent for said Apartment 21. If you didn't collect \$75, what did you collect?

A. Some of that charge was for the extra bed.

Q. Did you ever petition to charge for the extra bed to the rent office?

A. I didn't know you had to.

The Court: What was the extra bed for here in this instance?

The Witness: For the little girl, it is the same one. He was in three different apartments, your Honor.

The Court: How many beds in that apartment?

The Witness: One in the bedroom. It was just a one bedroom apartment.

The Court: A one-bedroom apartment? [97]

The Witness: Yes, sir.

The Court: How much did you charge them for extra service, did you say?

(Testimony of B. M. Crenshaw.)

The Witness: \$10 a month.

Q. (By Mr. Knowlton): In respect to Request 14, which is also found on page 3, you have admitted that Mr. and Mrs. R. C. Gregor occupied Apartment 21 from March 5, 1918, to June 1, 1948. You deny during each and every month of said period said tenants paid the sum of \$75 for rent for said Apartment 21. How much rent did they pay for that period?

A. They owe me \$105.

Q. I am asking you if they paid \$75 during those months?

A. No.

Q. How much did they pay?

A. You figure it out.

Q. They may owe you some money. But how much did you collect from them during those months they were there?

The Court: How do you know they owe you \$105?

The Witness: I made a statement out one time. I can't find it. I lost it. They paid \$20 and \$40.

The Court: What were you charging them?

The Witness: \$75 a month.

Q. (By Mr. Knowlton): You collected \$75 per month?

A. Not for the whole time.

Q. Do you remember when the Gregors moved out? [98]

A. No, sir, I don't.

Q. You collected \$75 per month from them for part of the time then?

A. Yes, sir.

Q. Would you say you collected it for the first three months they were there?

(Testimony of B. M. Crenshaw.)

A. I wouldn't know what three months the first three months were.

Q. However, you did collect \$75 for a number of months, didn't you?

A. I collected it partly all the way through. The first payment was \$20, the next one was \$40, the next one was \$35. I really wouldn't know.

Q. This \$150 you claim they owe (interrupted).

A. \$105.

Q. What? A. \$105.

Q. That is for the rent you didn't collect?

A. Yes, sir.

Q. At the rate of \$75 per month?

A. You can rate it any way you want to.

Q. In Answer to Request No. 7, you admit that Leona Reeves, Clarice Reeves and Lois Ketter occupied Apartment 24 from April 1, 1948, to June, 1948, but you deny that said tenants paid the sum of \$75 as rental for the use and occupancy of [99] said Apartment 24. I would like to ask you how much you collected from them if you did not collect \$75?

A. I collected the extra \$10 for the third girl in the apartment.

Q. Did you ever petition the office for an order allowing you to charge extra rental?

A. I never made it.

The Court: The request to admit mentions three girls, does it? What is the request to admit?

Mr. Knowlton: I think it does.

The Court: What did you mean when you de-

(Testimony of B. M. Crenshaw.)

nied you collected \$75 a month rent from Leona Reeves, Clarice Reeves and Lois Ketter for use and occupancy of Apartment 24? What did you mean by denying that?

The Witness: I wouldn't know.

Q. (By Mr. Knowlton): In answer to Request Number 17, you admit that Priscilla Larson occupied Apartment 36 from November 1, 1947, to June 1, 1948. You deny that for each and every month of said period said tenant paid the sum of \$65 a month as rental for said Apartment 36. If you didn't collect \$65 per month, what did you collect?

A. In what, 36?

Q. 36.

A. That was \$55 a month, an there was two of them there.

Q. How much did you collect from them? [100]

A. \$55.

Q. You collected \$55 for two or one?

A. Two.

Q. You didn't collect \$65 for two?

A. No, sir, I never did from 36. There must have been a typographical error there.

Q. In connection with Apartment 37, you admit, in response to my request, that Mrs. J. M. Ashmore occupied 37 from April 6, 1947 to March 6, 1948, and deny that you charged said tenant \$55 per month during said period as rental. This is the same Mrs. Ashmore as in the other apartment, isn't it?

A. Yes.

Q. Now, when Mrs. Ashmore was up there in 37,

(Testimony of B. M. Crenshaw.)

if you didn't collect \$55 per month, what did you collect?

A. I must have collected about half of it. She owes me \$385 now.

Q. Mrs. Ashmore does? A. Yes.

The Court: Did you charge her \$55?

The Witness: It was the rate it was supposed to be. Some months she would pay half and some months she wouldn't pay half, and then she moved.

The Court: Then, you were wrong when you denied you charged her \$55 per month? [101]

The Witness: Yes, sir.

Q. (By Mr. Knowlton): In response to our Request 16, you admitted Mr. and Mrs. Carl Jones occupied 48 from April 10, 1948, to June 1, 1948, and you deny that they paid \$11.25 per week as rent for said Apartment 48. If they didn't pay \$11.25, how much did they pay?

A. That is a new one on me. That is by the week?

Q. By the week. Did they pay \$11.25 by the week? A. Yes, sir.

Q. Why did you deny it then?

A. I must not have read that through. They wanted it by the week, your Honor, it is generally more money by the week than it is by the month.

Q. Mr. Crenshaw, in connection with these apartments generally, isn't it true as a matter of fact that your rents that you registered with the rent office in many cases were lower than the charges you made?

(Testimony of B. M. Crenshaw.)

A. Right on the rock bottom. They were war prices.

Q. You understand the charges you made from these various tenants were larger than those you registered? A. Yes, sir.

Q. Where did you get those charges?

A. I made them myself. Where did you expect me to get them?

Mr. Knowlton: You may examine. [102]

Cross-Examination

By Mr. Bunker:

Q. You say you made them yourself?

A. Yes, sir.

Q. Hadn't you, prior to making the changes to \$65 and \$75, received notices through tenants that those prices were the prices for the like or same apartments? A. Yes, sir.

Q. So, that when you received the notice that Apartment 24 had been set by the Office of Price Administration at \$65, what did that lead you to believe as to apartments of like character?

A. All those 18 are just alike except the three \$55's.

Q. It was your belief the rent was to be \$65 after you received the notice through your tenant?

A. Yes, sir.

Q. As to the one where you received the notice from John D. O'Neill? A. Yes, sir.

Q. That was \$75, wasn't it? A. Yes, sir.

(Testimony of B. M. Crenshaw.)

Q. That was about early in January, 1947, was it not? A. Yes.

Q. And that was for \$75? A. Yes, sir.

Q. And you believed you could make a charge in all like apartments of \$75? A. Yes, sir.

Q. You did charge \$75 for most of them?

A. Yes.

Q. Did you ever receive any notice that any of these apartments had been reduced from what you thought they had been placed at? A. No, sir.

Q. Did you ever receive a notice of this letter which has been testified to here by Mr. DeNayer as having been registered to you in June, 1947?

A. No, sir, I didn't receive any.

Q. Did you ever see that envelope?

A. No, sir.

Q. Did you ever see the contents of that?

A. No, sir.

Q. Did you ever know there was such a letter?

A. No, sir.

Q. Mr. Crenshaw, who—will you explain to the Court who is the person who has the right to the rents and is in charge of the rents?

A. You will have to get up here.

Q. Who is the person who is in charge of the rents to the Crenshaw Apartments, to whom the rents are delivered and who [104] has those apartments?

A. You mean at the present time?

Q. No, at the time this action was brought.

(Testimony of B. M. Crenshaw.)

A. Mr. Charles Bell, who was trustee for the R. F. C. Mortgage Company.

Q. What was your capacity as to the monies that were taken in from that apartment?

The Court: Under the trust agreement?

Mr. Bunker: Under the trust agreement.

The Court: Where is the trust agreement?

Mr. Bunker: I never had one, I just know it is signed with the R. F. C. office in Helena, Montana.

The Court: You had better bring it here. His interpretation of the trust agreement is not going to mean anything to the Court. You had better get it here into evidence.

Q. Did you have any authority over the money that was taken in?

A. Only to turn it over to Charles Bell.

Q. Did you turn it over to Charles Bell?

A. Yes, sir.

Q. Mr. Crenshaw, at the time in 1947, the time that all of these alleged overcharges were made, was there a mortgage on these premises?

A. Yes, sir.

Q. To whom was the mortgage given? [105]

A. The R. F. C.

The Court: Just a minute, now, if you want to go into that, if there was a mortgage, if it is of any importance here, bring the mortgage in; if there was a trust agreement, and if it is of any importance here, bring the trust agreement in. The position of the parties will be determined by what the mortgage

(Testimony of B. M. Crenshaw.)

or trust agreement provides, not by what he says it provides or how he interprets it.

Mr. Bunker: Your Honor, I am not going to ask him what the arrangements were beyond the fact of what he had to do.

The Court: What he had to do and what he didn't have to do and what the trustee had to do is determined by the trust agreement, and the only way I can make a decision as to whether or not there is a trust agreement and as to what it provides for will be to see the trust agreement.

Mr. Bunker: May we then tomorrow mail to you a certified copy of the trust agreement as filed?

The Court: You had better present it in evidence. The way to do it is to present it here. I can't take what his interpretation of what the trust agreement provides. What does that mean to me? You and I, as lawyers, have a difficult enough time trying to figure out what those things mean. If you want the Court to make any finding based upon the fact that this man was just an agent for the trustee, you are going to have to show me, and it is going to be done by presenting [106] the matter in evidence.

Mr. Bunker: I presumed it might be presented the same as these copies that are left out now and the originals put in tomorrow by the plaintiff.

The Court: If you can make a stipulation as to what the agreement was, what it was, what it provided for.

(Testimony of B. M. Crenshaw.)

Mr. Bunker: We have delivered to the Office of Price Administration already a copy. A copy has been delivered to them.

The Court: I should think you might be able to get together on a stipulation.

Mr. Knowlton: I suppose this testimony is to the effect that Mr. Crenshaw, at least during some period of time, was the agent of some trustee under some kind of an arrangement. However, it appears he is the man who collected the rents, he is the man who set the rents, by his own testimony. The Act provides it shall be unlawful for any person to demand, receive, or accept any rent for any controlled housing accommodations in excess of the maximum rent. What he done with the money after he got it doesn't seem to be material, as I view the case.

The Court: For the Court's information, have you ever read the mortgage and trust agreement?

Mr. Bunker: I have, your Honor.

The Court: Does that put the title of the property (interrupted). [107]

Mr. Bunker: It puts the title to all the rents in the trustee.

The Court: But it doesn't put the control of the property out of the defendant here, does it?

Mr. Bunker: Yes, sir, it does, your Honor. It puts control in the trustee.

The Court: In what respect?

Mr. Bunker: Not only as to rents, but as to everything else, in the trustee.

(Testimony of B. M. Crenshaw.)

The Court: Of course, he had to keep the property up and the usual provisions, but it was his property, wasn't it?

Mr. Bunker: No, it wasn't.

The Court: It amounts to an assignment of the rents?

Mr. Bunker: Both an assignment of the rents and of the control.

The Court: If that is what it is, it doesn't mean anything, but if you think it does, bring it in.

Mr. Bunker: It was an assignment of both the rents and control, so that if Mr. Bell didn't want Mr. Crenshaw there, he could say, "Get out." That is what the trustee agreement was.

The Court: You had better present it in evidence.

Q. (By Mr. Bunker): You did see, then, prior to the changing of any of these rents, these orders made by the Office of Price Control for Apartment Number 24 for \$65 a month? [108]

A. Yes, sir.

Q. And you never saw any change from that?

A. No, sir.

Q. And you did see the Joseph D. O'Neill order for Apartment 20? A. Yes, sir.

Q. And you did see the order of Mrs. Davies for \$65, or was it someone prior to Mrs. Davies, on Apartment 12?

A. Yes, that was the theater guy.

Q. Do you know what his name was?

(Testimony of B. M. Crenshaw.)

A. Who is the owner of the theater?

Q. Russell? A. Russell.

Q. When Russell was there? A. Yes, sir.

Q. And he showed you that?

A. Yes, sir.

Q. On Apartment 14, you stated there was, in addition to the furniture that was to be furnished in Apartment 14, certain things had to be done?

A. Yes, sir.

Q. What were they?

A. I took out some furniture. He put in a lot of his, and I stored mine.

Q. Was that agreed to at that time? [109]

A. Yes, sir.

Q. That he would have to pay for the change?

A. Yes, sir.

Q. Will you explain to the Court whether the storing of your own furniture is an expense to you? A. Yes, sir.

Q. And the moving is an expense to you?

A. Yes, sir.

Q. Now, in Apartment 16, for Mr. Vallee, you have stated that you put in new furniture in there?

A. I had to take out two twin beds and put in a single bed and put in a bed in the single bedroom for the little girl.

Q. In other words, you furnished other and different furniture for him in there? A. Yes, sir.

Q. Was that explained to him when you rented it and agreed to? A. Yes, sir.

(Testimony of B. M. Crenshaw.)

Q. On Apartment 17, Mr. Henke, I think you said you had to remove some of the furniture in there and store it?

A. Some davenport and chairs and some odds and ends that he wanted to put in.

Q. Did you remove your furniture?

A. Yes, sir.

Q. Was it necessary? [110]

A. I had to get his in.

Q. Was that an expense to you?

A. Yes, sir.

Q. Was there an expense in the storage?

A. Yes, sir.

Q. In Apartment 18, I believe you stated there was some other furniture requested?

A. Yes, sir.

Q. What was that extra furniture?

A. It was a dresser of some kind.

Q. You increased the rent because of that?

A. Yes, sir.

Q. Was that agreed to between you and the tenant? A. Yes, sir.

Q. In Apartment 20, you had an order on that for \$75 in your hands at the time that Mr. O'Neill rented it?

A. I saw it a little while afterwards.

Q. Was there any conversation with Mr. O'Neill or D. A. O'Neill that he was to go to the rent office and get the change made?

A. I wouldn't remember.

(Testimony of B. M. Crenshaw.)

Q. You are not sure about that?

A. I wouldn't say for sure.

Q. On Apartment 21, you testified there was an extra bed, is that correct? [111]

A. Yes, sir.

Q. Was there any other change in Apartment 21 besides the furnishing of a baby bed?

A. Not too much. There might have been some more changes, but it is too much for me to remember all of that.

Q. You can't remember them all?

A. I can't remember them all.

Q. There was some changes requested, and on that you based your right to ask for extra compensation? A. Yes.

Q. Now, on this extra furniture, you have extra furniture for furnishing other apartments not now furnished, is that correct? A. Yes, sir.

Q. When you use that, is the using and use and removal wear and tear on the furniture?

A. Yes, sir.

Q. It is expensive to you? A. Yes, sir.

Q. On Apartment 21, you stated that Gregor, during the period asked about, owed you \$105 on the claimed rent? A. Yes, sir.

Q. And that time, I believe, was only two months?

A. I wouldn't know just exactly.

Q. That was from the 5th of March, 1948, to the first of [112] June, 1948, which would be March, April and May, 1948?

(Testimony of B. M. Crenshaw.)

A. I wouldn't know just exactly, but the record ought to show.

Q. That's what he has asked about.

A. It must have been.

Q. For those three months, did he owe you \$105 that was not collected? A. Yes, sir.

Q. So that the amount owed you is more than any possible overcharge on that apartment?

A. I wouldn't know, you would have to figure that out.

Q. Well, three months, and according to the admission here, Mr. Crenshaw, there is \$25 a month overcharge.

A. That is supposed to be \$65 the same as the rest.

Q. \$50 is what they have. A. I see.

Q. That would amount to \$75 wouldn't it?

A. Yes, sir.

Q. And the \$105 is more than the possible overcharge for three months?

A. Yes, sir.

Mr. Knowlton: It seems to me counsel hasn't established a good ground for that. He hasn't established that those three months were the only three months Gregor was there. He might have been there for three years. [113]

Q. In other words, he didn't pay as much as \$50 a month?

A. Not when you figure it all up.

Q. You say on Apartment 24, they asked for

(Testimony of B. M. Crenshaw.)

extra furniture because there was an extra girl that went in there, is that right?

A. I gave them coffee tables and a new davenport.

Q. That was an increase from the \$65 that was allowed to \$75 because of that extra furniture you put in there for them?

A. Extra furniture and an extra person.

Q. And one extra person. In other words, you rented the apartments for a certain number of persons, and if there were more than that, you expected a greater rent?

A. Yes, sir.

Q. Why?

A. Because of the increase of the tenants. You can't take care of three the same as you can two.

Q. In other words, there is a greater wear and tear on everything with three than there is with just two? A. Yes, sir.

Q. On Apartment, that is Ashmore, and you actually were short \$375 on the rents that were collected from Ashmore, is that correct?

A. Yes, sir.

Q. They left just about the end of the time stated here, did [114] they not?

A. It must have been, I would have to look it up.

Q. So that they never did pay the full amount of \$75 a month in any one month, did they?

A. They was always behind.

(Testimony of B. M. Crenshaw.)

Q. They were always behind. Now, on Apartment 48, Jones, from April 10, 1948, to June 1, 1948, what was that arrangement, Mr. Crenshaw?

A. They were a little married couple and didn't have any place to go. She used the south end bath and shower, and he used the boy's shower, and I let him have it for \$11.25 a week. They just wanted it for a while while they were there.

Q. They didn't keep it?

A. No, for just a short time.

Q. For the period (interrupted).

A. I think five or six weeks. I wouldn't know, somewhere along there.

Q. And at any week they could move out?

A. At any time.

Q. That was a one-room apartment. You had to furnish it for two, is that correct?

A. Furnished a double bed. There was a bachelor bed there and I put in a double bed.

Q. Is that the reason the charge was \$11.25, besides the fact they only wanted it by the week?

A. It is a one-person apartment. They wanted it for two persons.

Q. Mr. Crenshaw, do you know if on June 26, 1947, you were in Bozeman?

A. June, 1946?

Q. June 26, 1947?

A. I wouldn't know.

Q. Do you remember when you went to Tennessee in 1947?

(Testimony of B. M. Crenshaw.)

A. You got me there, Brother, I wouldn't know.

Q. You can't remember?

A. No, sir, that is too far back. Too much has passed through my mind since then.

Q. I think you were in Tennessee.

A. I wouldn't know. I can't swear to it.

Mr. Bunker: That is all the cross examination, I think, your Honor.

Redirect Examination

By Mr. Knowlton:

Q. You have testified, Mr. Crenshaw, a tenant showed you an order or some other peculiar ways that you got hold of information that the rents on certain apartments were \$75 and \$65, is that not correct? A. Yes, sir.

Q. You never did make any inquiry any place as to what [116] specifically the rents were on each individual apartment, did you? A. No.

Q. As a matter of fact, on some of these apartments, you have continued almost up to the present date charging \$75, is that right?

Mr. Bunker: Objected to as incompetent, irrelevant and immaterial, and improper redirect examination.

Mr. Knowlton: I will tie it up.

The Court: Sustained.

Q. When was the first time you were advised that the rents were different than you were collecting?

A. God only knows, I wouldn't.

(Testimony of B. M. Crenshaw.)

Q. Well, didn't you and your attorney go over the Requests for Admissions which were served on you, and you answered September 7, 1948?

A. I wouldn't know.

Q. These ones we are asking you about.

A. I never read that. I just signed it and gave it back to him.

Q. I can advise you that all the orders applicable to this case are attached to that Request. Did you make any inquiry then?

A. I never had any orders.

Q. After you saw the Request for Admissions you were attempting [117] to answer, did you make any inquiry as to what those orders might be?

A. I didn't, no.

Q. Did you pay any attention to the orders after you got copies of them in that manner?

Mr. Bunker: Objected to as argumentative and improper redirect examination.

The Court: Overruled.

A. What orders are you talking about?

Q. There were copies of orders attached to the request for admissions, in your answer to which you stated you denied you had ever seen most of them?

A. I never saw any orders.

Q. At that time when you made your answers, there were copies of orders attached to the requests for admissions.

A. Admissions of what?

Q. The document you were answering, and this

(Testimony of B. M. Crenshaw.)

is a copy of it. It is our copy of the requests for admissions. We filed it and served it upon you and your attorney. That document to your left is your answer to those requests. Attached to those requests are groups of registrations and orders which you are asked to admit. You deny, if you look in there, knowledge of all the orders. Did you change your rental practice after you saw those orders or make any inquiry as to what effect they might have on your rental practices? [118]

Mr. Bunker: Objected to as incompetent, irrelevant and immaterial as to anything beyond this case. He is changing to the present time, which is not a part of this case.

Mr. Knowlton: It would certainly be proper as to the injunctive relief. Besides, Mr. Crenshaw has relied on his good faith.

The Court: Insofar as the injunctive relief is concerned, it is necessary and proper for the Court to know whether or not the defendant is now charging rents that are not authorized and whether or not those orders of the Rent Director have been called to his attention, and if, after they have been called to his attention, he is ignoring them, I think that is of importance to the Court, isn't it?

Mr. Bunker: At the time these interrogatories were answered, Mr. Crenshaw simply came into the office and I read him the questions (interrupted).

The Court: Well (interrupted).

Mr. Bunker: Just a moment, if I may, please.

(Testimony of B. M. Crenshaw.)

Then, he turned to these various registrations and the orders, and he said, "I don't know anything about them."

The Court: Well, you know when you hand somebody something, we can't help it if they don't look at it.

Mr. Bunker: He looked.

The Court: All of these were served upon him and upon you, and the government can't help it if he didn't look. If he [119] answered the questions, if he didn't know what he was answering, the government can't be bound by that, but he can be. He can't say he never saw or heard of these after they have been served upon him.

Mr. Bunker: He never looked at them.

The Court: Can he in conscience deny to this Court that those orders have ever been served upon him?

Mr. Bunker: I think these orders and matters shown to him were for the purpose of this case and nothing else. So far as he was concerned at that time, that is all he was interested in.

The Court: Isn't it of importance to this Court to know whether or not he is now charging rents over and above the rent authorized? Isn't it of importance for the Court to know that?

Mr. Bunker: I think if it is, it is the duty of the government to produce it and not make him incriminate himself in this Court.

The Court: The question is, is it of importance for me to know that?

(Testimony of B. M. Crenshaw.)

Mr. Bunker: Not in this case.

The Court: Isn't it important for the Court to know whether or not a violation is being made of an order?

Mr. Bunker: If it is, your Honor, it is up to the Office of Rent Control to produce it, and not up to the defendant. [120]

The Court: The copies of the orders were served upon him or upon you as counsel for the defendant, and the defendant made answer to that?

Mr. Bunker: That's right.

The Court: He must have known what the order was in order to deny it.

Mr. Bunker: Only to see if that corresponded with what was said here. That is all he looked at it for.

The Court: But he did know there was an order, and knowing there was an order, we can't help it if he never looked to see what it was.

Mr. Peterson: Isn't that a matter of inference? Isn't it objectionable at this time as improper re-direct examination? I submit it is a matter of inference.

The Court: It is a matter of inference, surely, but the Court is not supposed to be blind and dumb. I am supposed to find out all the facts of this case. Now, he has testified he did know about the orders. He knew there were orders; he knew that the Rent Director issued orders, and he knew that the tenants got copies of the orders. Now, he says

(Testimony of B. M. Crenshaw.)

that — and your contention is that — having heard and seen the order in one case, he just proceeded in the same way with reference to the other apartments because he thought they must be all the same. That is a question for the Court to consider, whether that is reasonable or not, or whether it would be [121] more reasonable for him, knowing there were other orders, knowing each apartment was handled separately, to inquire as to the other orders.

Mr. Bunker: The slips that you saw on the apartments 24, 12 and 20, were they in the shape of these orders, or were they merely slips showing what the amount of the rent was?

The Witness: I wouldn't know, just slips. Your Honor, the docket number that started me off was issued to the tenants in number 22. It is all on file in Washington. I wrote to my Senator and I wrote up to Tighe Woods and asked for a readjustment for all the apartments with the fifteen per cent advance. We never got a thing from the area office in Bozeman. I have a copy of the letter. I told him they issued orders without my consent, without consulting me in any way. Where they got the value, God only knows. That was dated — what was the date of that?

Mr. Bunker: That doesn't make any difference.

The Witness: The Judge asked for this. The Judge is entitled to the background, aren't you Judge? You want the facts of the case and what started it, don't you, Judge?

(Testimony of B. M. Crenshaw.)

The Court: I'll tell you what I want to know, and it is curious to me that you have so many people coming into the apartment that needed extra service.

The Witness: They asked for it and they got it.

The Court: You charged them for it? [122]

The Witness: Some of them I did, some I didn't.

The Court: That is the only explanation you have for the rents you charged?

The Witness: I think——

The Court: Answer the question. Is that the only explanation you have for the rents you did charge, your assertion that there was extra service you were giving your tenants?

The Witness: For the extra service?

The Court: Yes.

The Witness: For the extra cost of the furniture, wear and tear and depreciation.

The Court: The wear and tear and depreciation was an expense to you?

The Witness: Wear and tear on the property, everything.

The Court: That was all expense to you?

The Witness: Yes, sir.

The Court: That is why you were charging them, because it was money out of your pocket?

The Witness: It certainly was, your Honor.

The Court: It wasn't any money out of the trustee's pocket, it was money out of your pocket, is that it?

(Testimony of B. M. Crenshaw.)

The Witness: Most of it has been since the trustee turned it over.

The Court: You were the owner and operator of that apartment, weren't you? [123]

The Witness: I was the owner.

The Court: You were the operator?

The Witness: I operated it through Charles Bell.

The Court: You owed them some money?

The Witness: Yes, sir.

The Court: You fixed the rents on the apartments, didn't you?

The Witness: Yes.

The Court: You kept them going, you ran them, didn't you?

The Witness: I worked 24 hours a day for the last ten years.

The Court: You ran it, didn't you? You considered it yours? You considered it yours, that is why you worked 24 hours a day on it, isn't it?

The Witness: Yes, sir.

The Court: It was your apartment?

The Witness: Yes, sir.

The Court: Very well. Any further questions?

Q. (By Knowlton): I just want to ask you when Mr. Bunker showed you those things, you said you never saw them before. That is what you testified, isn't it? The Requests for Admissions with the orders attached and the registration copies attached, you told Mr. Bunker you never saw them before?

(Testimony of B. M. Crenshaw.)

Mr. Bunker: He never said that. He said——

The Court: Don't argue with counsel. Either challenge the [124] record or keep quiet. Direct your remarks to the Court.

Q. Didn't you go up to Mr. Bunker's office in connection with answering the requests for admissions, and didn't you sign a paper there. You have already stated you did sign it?

A. Yes.

Q. Didn't you go over the various things with Mr. Bunker that you were signing?

A. I don't think so. I figured they were all right if he presented it.

Q. In other words, all that happened at that time, Mr. Bunker didn't even ask you about the orders, whether you ever saw them or not?

A. We might have discussed them, I don't know. There is so much stuff come up.

Q. After you saw that instrument, did you make any change in your rental practices?

Mr. Bunker: Objected to as argumentative, incompetent, irrelevant and immaterial, and improper redirect examination.

The Court: Overruled.

Q. Did you change any rents after you were up to see Mr. Bunker?

A. I change them every day.

Q. You change them every day without regard to what they might be down at the office of the Housing Expediter.

(Testimony of B. M. Crenshaw.)

Mr. Bunker: Objected to——[125]

The Court: Overruled. Answer the question. Do you change the rents whenever you feel like it?

The Witness: Yes.

The Court: Without regard to the Rent Control Office?

The Witness: They wouldn't give me any co-operation.

The Court: Do you change your rents without any consideration of what the Rent Director might do?

The Witness: I take his \$65.

The Court: And charge whatever you want to?

The Witness: No, not whatever I want to. If I charged what I wanted to, it would be \$100 to break even on the investment.

The Court: Do you fix the rents without regard to what the Rent Director fixes them at?

The Witness: No, sir. He fixed them at \$65. I figure I have the right according to law to charge 15% more.

The Court: 15% more than the Rent Director fixed?

The Witness: That is one reason.

The Court: You think you have the right to charge 15% more than what the Rent Director fixes?

The Witness: Yes.

The Court: What is the other reason?

The Witness: Service.

(Testimony of B. M. Crenshaw.)

The Court: Any other reasons?

The Witness: Furniture and service.

The Court: Furniture and service and you have the right to [126] charge 15% more than the rent director fixes the rent at?

The Witness: Yes, sir.

Q. (By Mr. Knowlton): You never entered into any leases in connection with the apartments?

A. No leases on the apartments.

Q. How many times have you yourself been in the rent office in Bozeman? A. Once.

Q. When was that? A. The 16th of March.

Q. 1946? A. It must have been.

Q. Have you ever been in there since?

A. No, sir.

Q. Did you ever call at the office for information?

A. Mr. Bunker has, not me.

Recross-Examination

By Mr. Bunker:

Q. And you did pay attention to comparability of those \$65 and \$75 apartments, is that correct?

A. Yes.

Q. You thought you were doing right?

A. I thought I was doing right.

Q. That has been your policy? [127]

Q. Now, the question was asked you how many times you had been in the rent office and you said just once?

(Testimony of B. M. Crenshaw.)

A. On the 16th of March, 1946, when they came in there.

Q. At that time, who was with you?

A. What was that?

Q. At that time, who was with you?

A. E. F. Bunker and Charles A. Bell.

Q. Is Charles A. Bell the trustee we have spoken of?

A. Yes, sir.

Q. Bunker is me?

A. Yes, sir.

Q. At that time, who was present in the rent office?

A. Mr. DeNayer and some girl, I don't know her name, and two or three or four more.

Q. Did you at that time, with Mr. Bell's consent, make any direction to them as to where notices would be given?

A. I told the rent director at that time to send all the papers to Mr. Bunker. I said, "I have made arrangements with him to take care of all the office work and would give the stenographer extra money for her services. Anything that came up would have to go through Mr. Bunker's office."

Q. Did Mr. Bell agree to that at that time?

A. Yes, sir.

Q. So far as you know, was that agreeable to them, did they take it down? [128]

A. They never objected.

Q. Didn't they say that was all right?

A. Yes.

Q. Did any ever come to my office that you know of?

A. What is that?

(Testimony of B. M. Crenshaw.)

Q. Was anything sent to my office that you know of unless you brought it?

A. If it was, you took it up with me.

Q. Did you ever know of anything being taken up with you that came from the rent office to me?

A. Not yet.

Mr. Bunker: That is all.

(Witness excused.)

The Court: It is at such hour now that the Court has other work to do.

Mr. Knowlton: If your Honor please, I have a number of witnesses here who come all the way from Bozeman. I brought them. They are here, some in this case and some in the next case. If Mr. Crenshaw is going to give the same testimony so far as rents are concerned tomorrow as today, I see no reason why I can conscientiously keep these witnesses here.

The Court: Well, of course, Mr. Crenshaw's testimony has been, to some extent, at least, that the rents have been charged, not for the rent of the apartment itself. There may be some evidence to that effect that it wasn't for the rent of the apartment [129] itself, but for some other service he rendered. If the matter is of importance to you, I think you had better keep your witnesses. Court will stand in recess until five o'clock. This case will be continued until ten o'clock tomorrow morning.

(Whereupon, the trial of this cause was recessed until 10:00 o'clock the following morning, September 28, 1949, at which time the following proceedings were had:)

The Court: Proceed.

Mr. Knowlton: The Clerk advises me that the records and exhibits introduced in connection with the case of Fleming vs. Crenshaw, 306, and Woods vs. Crenshaw, 344, arrived this morning.

The Court: You can make such examination of them as you wish, and I'll make an order on it when you pick out the exhibits you are interested in. I can make an order withdrawing them in the other file, making them available for introduction here. You could do that some other time. Let's proceed here.

Mr. Knowlton: I think I will recall Mr. Crenshaw for one more question.

B. M. CRENSHAW

recalled as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Knowlton: [130]

Q. Mr. Crenshaw, did you ever, from time to time, receive mail from the office of rent control in Bozeman? A. I don't think so.

Q. Never received any. Did you ever destroy any mail you received? A. No, sir.

Q. Nor threw it away before looking at it?

(Testimony of B. M. Crenshaw.)

A. No, sir.

Q. You can't recall ever having received any mail?

A. I have received letters, I am quite sure I received one or two.

Q. That is all you can remember?

A. They wasn't registered, they was direct.

Cross-Examination

By Mr. Bunker:

Q. Mr. Crenshaw, you were asked yesterday if you made any appeal from the orders of the Housing Expediter or whoever was in charge at the time, from any of the orders. I think you said you never had. Is that right?

A. I never appealed from them, but I wrote direct to Tighe Woods and asked for an outside inspector to come in and give me a fair adjustment.

Q. Why did you do that?

A. They never gave me any satisfaction, and I figured they [131] wouldn't give me any, so I wrote direct to him.

Q. They also, they testified yesterday, Mr. De-Nayer, that you had evicted some of the housing men. Did you know they were housing men at the time you threw them out?

A. No, sir, I did not.

Q. Did you put them out?

A. Yes, sir.

Q. Explain why you did.

A. They were down knocking on No. 1 door

(Testimony of B. M. Crenshaw.)

and I happened to come to the stairway. Coming to the bottom, I asked what they were doing, and they said they wanted to get into the apartment to look the apartment over. Mrs. Applegate — her daughter is just like a baby doll — was standing there and said, "I don't want you here, I am satisfied. Mr. Crenshaw started me out and put me over here," she said, "and I am satisfied. We are not arguing about anything in the world." I said, "You fellows get out of here." I goes back upstairs expecting trouble, and I gets my club about that long (indicating), the tail end of a billy. He started reaching in his pocket and I grabbed him by the back of the neck with my right hand and kicked his feet out from under him and throwed him out the front door. Coming back, another one was standing there. He didn't start to put his hand in his pocket and I just reached up and grabbed him by the neck, for I figured he was his pal. I felt me being the owner of that property and trying to protect my property and [132] protecting my tenants that I have the right to put them out.

Q. Was it to protect certain tenants in that apartment house?

A. Yes, sir, I had orders from — I don't know the doctor's name, but it was Baxter's daughter. What is her name?

Q. Anderson.

A. Anderson. I never did know her by Anderson. I always called her by her first name. He

(Testimony of B. M. Crenshaw.)

says, "I am tickled to death the girl is over there. She is six months gone. I know she is going to be happy there, she is going to have protection. Her husband is out in Seattle." And he complimented me. He said, "It is wonderful I have such a good place for my daughter to stay." "I will take care of her the same as if she was my sister or daughter or mother or anybody else," I said.

Q. What you meant when you said Mrs. Anderson was six months gone was that she was six months pregnant, isn't that right?

A. Yes, sir.

Q. She was in a delicate condition?

A. Real serious.

Q. Seriously ill?

A. Yes, sir, this doctor gave orders that nobody was to bother her in any way, shape or form.

Q. Did you have some other difficulty with people coming in and rapping on doors or making a disturbance? [133]

A. A little while after that, Mrs. Whitaker's boy came back from the South Pacific. We tried for a year and a half to sober him up. We would pick him up on the stairway and take him up and put him to bed.

Q. Did you have to evict other persons from the apartment house?

A. I had to call up the police to take these out. There was two of them, and I didn't want to tackle two of them.

Q. Mr. Crenshaw, were you present when Mr.

(Testimony of B. M. Crenshaw.)

DeNayer was informed by me that any time they wished to inspect that apartment house that they should come to me, and if they couldn't find me, to come to you and request it, and we would arrange to have them see any apartment at a convenient time?

A. Yes, sir.

Q. Did he ever come to you?

A. Never did show up.

Q. Did you ever know of his coming to me?

A. I never knew of it.

Q. Were those men there on an inspection, do you know, or what were they there for?

A. I didn't know whether they were O. P. A.'s or what they were.

Q. That is, on this day that you put these men out, did they on that day come to you or attempt to come to you?

A. I never saw them. [134]

Q. Were you in the building at the time?

A. I was in my office and apartment, my home at 13.

Q. Was this matter brought up at a former hearing in this Court?

A. Yes, sir.

Q. Where was that?

A. Helena, Montana.

Q. Was that the United States District Court?

A. Yes, sir.

Q. What was the result of the matters as brought up there at that time? .

A. Judge Brown complimented me on my protecting my tenants and my property.

Q. Now, on yesterday, Mr. Knowlton called some attention to one or two mistakes you made

(Testimony of B. M. Crenshaw.)

in your affidavit in answer to their interrogatories, and what have you to say as to how that happened?

A. If I made a mistake, it was a mistake in good faith. I didn't want to do anything wrong in any way, shape or form.

Q. Your denials were upon the basis of what you thought was right?

A. I wanted to protect my property and my tenants.

Mr. Bunker: You may examine. [135]

Redirect Examination

By Mr. Knowlton:

Q. You just explained what the tenant told the man that was talking to her, the woman by the name of Anderson——

A. Wait a minute.

Q. Somebody was talking to this Mrs. Anderson?

A. No, no, Mrs. Applegate.

Q. Whereupon you threw him out of the building?

A. When he came upstairs after the conversation.

Q. You didn't hear the conversation?

A. I heard her tell him she didn't want to be bothered.

Q. Did you hear any part of the conversation?

A. They wanted to get in the apartment.

Q. For what purpose?

A. That is what I didn't know.

(Testimony of B. M. Crenshaw.)

Q. You heard the conversation?

A. How could I tell?

Q. You were principally afraid they would find a violation in your apartment?

A. I would have been glad for them to see that apartment. It is one of the best apartments in the building. I would be glad to show them if they had come up and I could have made arrangements.

Q. By the way, why do you keep a club on each floor?

Mr. Bunker: Just a minute——[136]

Q. He testified to that effect. I want to know why?

Mr. Bunker: He never testified to that, we object. A. Yes, I did.

The Court: Objection overruled.

A. I have got them there right now.

Q. What for?

A. For to protect my tenants.

Q. From whom?

A. Drunks coming in there and laying on the stairway.

Q. Your apartment house must be in a rather poor section of town?

A. It is the best section of town. We have some of the best people in America there. I am going to protect them. It is one way I have to protect them. I never packed a six-shooter in my life, and I never will.

Q. You said that Judge Brown complimented you at some previous case tried in Helena?

(Testimony of B. M. Crenshaw.)

A. It is in the record.

Q. He also found you wilfully violated the Price Control Act in overcharging your prior tenants, didn't he?

A. Didn't I pay the fine?

Mr. Knowlton: That is all.

(Witness excused.)

The Court: Call the next witness.

Mr. Knowlton: Plaintiff will close his case.

The Court: Before formally closing your case, maybe you had better arrange to make substitution of the exhibits for the record.

Mr. Knowlton: I should like to do so after I have had an opportunity to examine the records and decide which ones to substitute.

The Court: Court will stand in recess for 10 minutes to give you such time.

(10-minute recess.)

Mr. Knowlton: I think I have this line up here, if your Honor please. On Plaintiff's Exhibit 1 introduced here, which is the entire file, in Cause 306, Fleming vs. Crenshaw, the original registration was introduced there as a plaintiff's exhibit in that case; also the registration is in the — by the way, the order plaintiff claims was made was indorsed on the back of the registration which was introduced in the previous case, so Mr. Crenshaw must have necessarily known about it at that time.

The Court: You needn't argue about the matter

at this time. Is there any objection to the introduction at this point?

Mr. Bunker: I haven't made any comparisons.

The Court: I think this is a matter you should be able to agree on. However, it is up to you. Court will stand in recess for 15 minutes to give you an opportunity to compare those.

(15-minute recess.) [138]

Mr. Knowlton: In place of Exhibit 1, which is this file we introduced in this case which contained this instrument, which is the order referred to on the back of the registration, in place of the whole thing, I would like to introduce and substitute a document marked Plaintiff's Exhibit 1, which was introduced in the case of Fleming against Crenshaw, 306, Helena Division. I request to withdraw Plaintiff's Exhibit 1 in Cause 306, Fleming vs. Crenshaw, and have it introduced in this case, together with this instrument here, and also withdraw the original Plaintiff's Exhibit 1. I would like to have these documents marked for convenience 1 and 1-A

The Court: Any objections?

Mr. Bunker: That is satisfactory.

The Court: Very well, let that be done.

(Plaintiff's Ex. 1-A, being Order Fixing Rent on Apt. 1, here received in evidence, will be certified to the Court of Appeals by the Clerk of the District Court.) [139]

Mr. Knowlton: In place of Plaintiff's Exhibit

6, in this cause, I should like to substitute the Plaintiff's Exhibit 3 in the case of Fleming vs. Crenshaw, No. 306, Helena Division, and withdraw Plaintiff's Exhibit 3 from the Fleming vs. Crenshaw case.

Mr. Bunker: Okay.

The Court: Very well.

Mr. Knowlton: This, I suppose, will have the same exhibit number, No. 6. In connection with Plaintiff's Exhibit 7 in this cause, I should like to withdraw Plaintiff's Exhibit 7 and substitute for it Plaintiff's Exhibit No. 4 in the case Fleming vs. Crenshaw, No. 306, Helena Division, and withdraw Plaintiff's No. 4 from the Crenshaw-Fleming case.

Mr. Bunker: No objection.

The Court: Very well, let it be done.

Mr. Knowlton: I would like to withdraw Plaintiff's Exhibit No. 5 in the case of Woods vs. Crenshaw, No. 344, and add it to this case as Plaintiff's Exhibit 5-A. Now, if your Honor please, Plaintiff's Exhibit 5 was a copy of the registration with an order endorsed on the back. The chief reason why I introduced it was to show the order on the back of it. The original of the order can be compared with the notation; it is the same as the order that was introduced in that cause, No. 344, and I should like to add it to this cause as Plaintiff's Exhibit 5-A.

Mr. Bunker: No objection to the exhibits.

The Court: Very well, it will be done.

Mr. Knowlton: If your Honor please, I find

there is already Exhibit 5-A. I should like to make this new one 5-B.

The Court: Very well.

Mr. Knowlton: I think that will take all of the copies out of this file, your Honor.

The Court: Very well.

Mr. Bunker: May we say to the Court at this time that Action 306 was an action tried on the 6th or 8th of January, 1947 for alleged violations prior to that time some five or six months. The matters covered by the last exhibit, and also [140] by the stamped marks on the back of those were not a part of the 306 case and were not known to this defendant at any time for the reason that they were not a part of the case, and all that was in question at that time when those exhibits were allowed without objection was the question of whether he had registered at that price. That was the purpose of the exhibit, and nothing more. That was the purpose in the other case, so that I don't want these to be taken as notice to Mr. Crenshaw of anything other than his own registration.

The Court: I don't see that they were introduced in another case for a different purpose and I don't see that their use in another case is of any evidentiary value here.

Mr. Bunker: That's right, your Honor.

The Court: Proceed with the defense.

B. M. CRENSHAW

defendant, called as a witness in his own behalf, having been previously sworn, testified as follows:

Direct Examination

By Mr. Bunker:

Q. Mr. Crenshaw, in arriving at your prices for your apartments in the Crenshaw Apartments, did you or did you not, in considering the orders which you had seen of the rental values of various apartments and on like apartments, consider you were permitted to charge like rents? [141]

A. Yes, sir.

Q. And did you do that? A. Yes, sir.

Q. I understand that in some of those you were requested and gave services over and above what other apartments received, and for that you made an extra charge, is that correct? A. Yes, sir.

Q. Did you believe you were entitled to that?

A. I certainly did.

Q. Were they because of your work and labor expenses and you expected to be reimbursed?

A. Yes, sir.

Q. That is why you did that? A. Yes, sir.

Q. Did you, at any time, intend to go above what you were permitted to go? A. No, sir.

Q. In other words, did you think you were acting in perfectly good faith at all times? A. I did.

Q. That is what you were trying to do?

A. All the way through.

(Testimony of B. M. Crenshaw.)

Q. When you wrote your letter to Mr. Woods, was that what you were attempting to do?

A. To the best of my ability, at that time I wrote, I was in [142] good faith all the time.

Q. Did you feel that you had not been given the opportunity of acting in good faith with the Board existing in Bozeman? A. I did.

Q. Did you object to that board? A. Yes.

Q. Have you objected at all times to that Board?

A. Yes.

Q. Your objection has been because you couldn't get anything definite out of them, isn't that correct?

A. No action, nothing definite.

Q. Do you, at this time, still desire to get this matter of equipment on a basis so you can proceed without difficulty with the Board?

A. That is the reason why I signed those 41 applications.

Q. And you wish to comply in all ways that you can with the regulations?

A. I certainly do.

Q. I want to ask you one further question. Do you know whether the Office of Price Administration at Bozeman was given the opportunity to make inspections of those apartments at any time, simply upon request for permission to do so?

A. You will have to repeat that.

Q. Do you know, and were you present at the time that the Office of Price Administration officials were given notice [143] that they could in-

(Testimony of B. M. Crenshaw.)

spect and see any of these apartments at any reasonable time?

A. Yes, that was March 16th. That is when I told them I would be glad to make arrangements at any time, take it up with the tenants. I didn't want them going in before breakfast or after supper. I wanted them to be satisfied with the time they came. I would be glad to make arrangements.

Q. At a later time, were you present in my office when Mr. DeNayer was told that at any time he wanted to request permission, to come to me, and if I were not present to go to you and get permission to go in?

A. Yes, I would be glad to make arrangements.

Q. Were you ever requested to permit anyone to go into that apartment?

A. I never was, no.

Q. Do you know whether I was or not?

A. I don't think so.

Mr. Bunker: You may examine.

Cross-Examination

By Mr. Knowlton:

Q. You stated, Mr. Crenshaw, at the present time you are quite willing to comply with all the regulations relative to the Housing Expediter's office?

A. I have been that way all the time. [144]

Q. However, you have changed the rents, and you haven't petitioned the Board, save in the last couple of weeks, and back in 1946?

(Testimony of B. M. Crenshaw.)

A. Those are the first notices I ever received.

Q. But you never bothered to petition anybody yourself?

A. I had left instructions to give them to Mr. Bunker.

Q. From September, 1946 to September, 1949, you have never filed a petition?

A. I asked Tighe Woods for an adjuster to come in and adjust it. What else could I do?

Q. You never filed a petition with the office here in Bozeman, did you?

A. I didn't figure I would get any action or a fair deal.

Q. As a matter of fact, hasn't it been your policy to keep agents of the Housing Expediter out of your place?

A. I have had them in there. I had four of them in there and visited with them for half an hour and asked them to adjust one injustice is all I asked them. I asked them to explain why this one was \$65, another one \$45 and another \$75. I asked them that. I couldn't figure it out. I never went through law school. The seventh grade is as far as I have gone, but I can add and subtract. That is the reason why I asked Mr. Bunker to take this work over. I didn't know nothing about this at all. Your Honor, that is the reason why I asked Mr. Bunker to take care of it. [145]

The Court: You say you want to comply with the orders of the Rent Director?

(Testimony of B. M. Crenshaw.)

The Witness: I have all the time.

The Court: You now know what those orders are?

The Witness: Yes, sir.

The Court: You will comply?

The Witness: I will.

Mr. Bunker: We have, your Honor, petitioned.

The Court: That is within his rights. He can petition and follow the procedure provided by law. The point I want to understand is his statement that he wants to comply. There is now no doubt, is there, what the orders are as to what rent you can charge for these various apartments? You know what that is now?

The Witness: I expect to find out.

The Court: You know?

The Witness: I expect to find out from these 41 applications.

Mr. Bunker: I may say, your Honor, we are going to ask the office at Billings to send us a listing on each and every apartment. I am frank to tell you I still don't know what the rents on any apartments are, only some of those in this case.

The Court: You can take the orders that have been introduced in evidence here. You have an opportunity to examine them. I think you have seen them. Those are orders fixing the maximum rent you can charge for the particular apartments. Do you [146] understand that?

The Witness: Yes, sir.

(Testimony of B. M. Crenshaw.)

The Court: It is your desire to follow those orders, is that right?

The Witness: Yes, sir.

The Court: You never knew that any of these orders existed?

The Witness: No, sir, I never saw a one of them, your Honor.

The Court: I didn't ask that. Did you know these orders existed?

The Witness: No, sir.

The Court: You knew some orders existed, didn't you?

The Witness: Some of them.

The Court: Did you know that each apartment was considered a separate accommodation and separate orders were issued on each apartment, did you know that?

The Witness: That is what I tried to put through all the time. My 30 apartments are all the same value. That is what I have been fighting for.

The Court: That is what you contend. That is not what I am asking you now. If you will just answer the questions. Did you know each apartment was considered separately?

The Witness: Yes, sir.

The Court: And that a separate order was issued with reference to each separate apartment.

The Witness: One or two orders, I have seen, and no others. [147]

The Court: I am not asking that. Now, if you will just answer my question, and then you can

(Testimony of B. M. Crenshaw.)

explain it after you answer my question. Did you know they issued separate orders for each apartment?

The Witness: Yes, sir.

The Court: Do you want to explain that any further?

The Witness: I would like to know why they issue an order for \$65 right over 10, and then they go into the Federal Court in Helena and get an order that I am not to bother that woman or charge her more than \$35 a month. She has been in there 40 months, an undesirable tenant for various reasons, and the one next to it——

The Court: You are not going to get any place with me saying that Judge Brown, sitting in this Court, didn't do the right thing. That was a fair trial you got in this Court. You are not impressing me by saying he didn't handle your case properly.

The Witness: I am not saying he didn't handle it properly. I told you what he did.

The Court: You knew there were separate orders on each apartment?

The Witness: Yes.

The Court: A number of separate orders you actually saw?

The Witness: Some of them I actually saw.

The Court: You made no effort to find out what the particular orders were with respect to the apartments concerning which you [148] didn't see the Director's order? You didn't check?

The Witness: I took the order to Mr. Bunker.

(Testimony of B. M. Crenshaw.)

I says, "Find out, if you can, why this establishes \$65 and \$35 and \$75.

The Court: Let's take, for example, Apartment 21, if you didn't see the order in that case. Did you see the order fixing the maximum rent with reference to Apartment 21?

The Witness: No sir, 22.

The Court: On 22.

The Witness: 22, I saw *that*.

The Court: You didn't see the one with reference to 21, you didn't see that one?

The Witness: No, sir, 20 and 22 is the only ones I have seen.

The Court: But you yourself made no effort to find out what the order was?

The Witness: I took them to my lawyer and I says, "Find out, if you can."

The Court: You took them to the lawyer to find out why the difference?

The Witness: Yes, sir.

The Court: Did you make any effort to find out what the order was with reference to Apartment 21?

The Witness: I didn't know whether there was an order or what you would call it. One explains the docket number some way. They get me all confused. [149]

The Court: What I am trying to find out is, you contend you were acting in good faith?

The Witness: Yes, sir, all the time.

The Court: I want to find out what your actions

(Testimony of B. M. Crenshaw.)

were that establish your good faith. We first proceed on the basis that you did know that separate orders were issued with references to each apartment?

The Witness: Yes, sir.

The Court: Some of those orders you say you didn't receive, didn't see?

The Witness: I didn't see them.

The Court: You did see some of them?

The Witness: I did see some of them.

The Court: With reference to those orders that you didn't receive, you knew there were orders on those apartments?

The Witness: No, I didn't know there were orders on them.

The Court: You didn't know there were orders?

The Witness: How could I know if I didn't see them or Bunker inform me of them.

The Court: Some tenants showed you copies of the orders they received?

The Witness: In 22.

The Court: You never asked the tenant in 21 if he had received a copy of an order?

The Witness: I found out he did have an order, but I didn't [150] see it.

The Court: But you knew it had been issued?

The Witness: Yes.

The Court: How about in connection with Apartment 4 and all of the other apartments that you say you didn't receive the orders on, did you discuss those with the tenants?

(Testimony of B. M. Crenshaw.)

The Witness: Not Number 4, Number 4 is an O. P. A.

The Court: With Apartment 16, did you discuss that order with the tenants of that apartment?

The Witness: No, sir.

The Court: Did you discuss it with the tenants of any of the apartments other than the ones that you have already mentioned?

The Witness: Just 22.

The Court: 22 is the only one you discussed it with. You didn't ask any other tenants whether they had received copies of the orders?

The Witness: I didn't make any inquiries.

The Court: Did you know whether or not they had received copies of the orders?

The Witness: I did not.

The Court: You have testified that you have had difficulty with the Rent Director's office in Bozeman?

The Witness: My lawyer did, I didn't, for I never was in there. [151]

The Court: You said your relationship with the office was not good, is that right, or what was the situation between you and the Rent Director's office in Bozeman?

The Witness: I never went in there, and he never visited me.

The Court: You had no difficulties at all?

The Witness: Mr. Bunker and him did, not I.

The Court: You didn't?

(Testimony of B. M. Crenshaw.)

The Witness: No, for I didn't contact him.

The Court: Your only interest was in following the orders of the Rent Director?

The Witness: He would put them through Mr. Bunker, and Bunker would give them to me.

The Court: Just answer the question. Is that what your only interest in connection with the Rent Office was, following orders?

The Witness: I would have if I had them, but I didn't have them.

The Court: You will do much better with the Court, Mr. Crenshaw, if you will answer my questions. When I ask you a question, don't answer something else, don't tell me what you would have done under some other circumstances. Just answer the question that I ask you, and then after you answer the question, if you think there is something more you want to tell me or you think I should know in order to know the whole truth, then tell me, but answer my questions as I put them to you. Now, in [152] connection with your relationship with the Rent Director's Office, do I understand your contention to be that your only interest was to find out what the orders were and then to follow those orders?

The Witness: Yes, sir.

The Court: But you never went to the Rent Director's office?

The Witness: No.

The Court: Do you ever know of the Rent Direc-

(Testimony of B. M. Crenshaw.)

tor or any employee of the Rent Director's Office coming to your apartment, your residence?

The Witness: There was three come there one time, they come from Denver. We had quite a visit for about half an hour, but I wouldn't know the date.

The Court: What was the nature of the discussion?

The Witness: I told them I had seven O. P. A.'s, and I asked them if there was any accommodations. They said there wasn't a thing. I wanted some of them to move to improve the property.

The Court: What did they come to see you about?

The Witness: They had come on an official visit was all I thought. That is all I discussed with them. When they couldn't do anything there, they said they might just as well go back to Denver.

The Court: The question of maximum rent was never discussed between you?

The Witness: Yes, the order for \$65 and the O. P. A.'s \$35. [153]

The Court: You did discuss the orders?

The Witness: Yes, sir.

The Court: Concerning which apartments did you discuss the orders?

The Witness: Numbers 5, 3, 4, Number 10.

The Court: You didn't discuss the maximum rent orders with reference to any other apartments?

(Testimony of B. M. Crenshaw.)

The Witness: No, they didn't bring that up.

The Court: Neither did you?

The Witness: I wanted them all adjusted as all my apartments, the 18 in the gym, are exactly the same size and practically the same furniture. Why can't I get the same price for all of them?

The Court: You did discuss the maximum rent for each apartment?

The Witness: I guess that would be what you would term it.

The Court: Did you discuss it in the light of what orders had been issued?

The Witness: I says, "Why can't they be all \$65?"

The Court: You knew they were all different?

The Witness: I knew they were all different.

The Court: You were asking them to change them?

The Witness: Yes, sir.

The Court: Any objections to the Court's questions?

Mr. Bunker: None, your Honor. If I may ask a question, [154] I think I can clarify this.

Redirect Examination

By Mr. Bunker:

Q. This, Mr. Crenshaw, was immediately following Dr. Ritter's disclosure to you of the \$65 order, was it not? A. Yes, sir.

Q. Thereafter, there was no conference with you

(Testimony of B. M. Crenshaw.)

after you discovered the other apartment was \$65 also, was there?

A. No conference after that.

Mr. Bunker: I think that is right, sir. That is all.

The Court: Very well, that is all.

(Witness excused.)

EUGENE F. BUNKER

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Peterson:

Q. Your name is Eugene F. Bunker?

A. Yes, sir.

Q. What is your profession, Mr. Bunker?

A. Attorney at law.

Q. You are duly authorized and licensed to practice in all of the Courts of the State of Montana?

A. Yes, sir. [155]

Q. Where is your office and residence?

A. Bozeman, Montana.

Q. Mr. Bunker, you have heard testimony in this case, of course, given by Mr. Crenshaw?

A. I have.

Q. Referring to a pertinent item, that is Apartment Number 12, and a certain order issued, will you tell the Court the circumstances of that order, as far as you know?

(Testimony of Eugene F. Bunker.)

A. Mr. Crenshaw came to my office and stated to me that Dr. Ritter had shown him an order for \$65 on that apartment, and asked me to investigate at the Office of Price Administration as to the other apartments. I went to the office of Price Administration in Bozeman, Montana. There was a girl there, which one she was or who she was, I can't tell you, the girl in charge of the office. She went to the files and turned and came back and said that that file and most of the others are in Billings and she would have to notify me later. I was never notified later of anything.

Q. Now, Mr. Bunker, does that conversation refer to Apartment Number 12 or 22?

A. Which one was Dr. Ritter in—22, I beg your pardon, I guess it was 22.

Q. Did I understand you had notice of that order?

A. Through Mr. Crenshaw.

Q. There has been some confusion here and conversation about [156] notices. As Mr. Crenshaw's Attorney, have you made visits to the Rental Office at Bozeman?

A. Many times.

Q. For what purpose?

A. For the purpose of trying to find out various matters concerning the apartments. I was there, I was over to see if it were possible to have one or two, I think, tenants removed from the top floor of the main building in order that Mr. Crenshaw could complete about eight or 10 full apartments instead of having bachelor apartments, single room apartments.

(Testimony of Eugene F. Bunker.)

Q. Have you, as his attorney, endeavored to bring about compliance with the rental regulations of that area? A. I have.

Q. What, if any notice—what, if any, understanding did you have with the Rental Office in Bozeman as to notices?

A. Immediately upon having filed the original registrations, Mr. Crenshaw stated that he was very busy. I think he was at the time attempting to stop leaks in his roof. It was in April and the snow was coming through. He said that he wasn't coming back to the office. He had attempted to tell them during the registration various matters concerning the various apartments and what he intended to do with those apartments. They had cut him off pretty short. And he had also stated to them that he was pretty busy and maybe he had made some mistakes and that he wanted all the papers to come to me. Mr. [157] Bell, who was trustee there, was present at the time with Mr. Crenshaw. He said that would be the better way and asked if they would do it. The girl replied she would. Mr. DeNayer was back and forth during all the conversation. Whether he was there at that time or not, I can't tell you, but he was in the office. She stated that would be done.

Q. Do you want the Court to understand that this conversation took place in the presence and hearing of Mr. DeNayer?

A. That's right.

(Testimony of Eugene F. Bunker.)

Mr. Knowlton: You just stated you didn't know that.

The Witness: I stated he was there, but he should have had immediate notice from his clerk.

The Court: You can cross-examine, but don't interrupt and argue with the witness.

Mr. Knowlton: I apologize, your Honor.

Q. Have you been in on more than the two occasions which you have mentioned? I refer to the Rental Office in Bozeman.

A. I have been to the office a great many times.

Q. Have you been in frequent touch with the office by telephone conversations?

A. Many times.

Q. Have you received any notices of any orders?

A. Never.

Q. Neither in writing nor orally?

A. Never, other than answers to my questions. At the time [158] Mr. Crenshaw completed his new apartments, I called the office to ask them if it were necessary that we re-register. He informed us that it wasn't, that they didn't want any registrations.

Q. As to the inspection of the premises known as 6 West Babcock Street in Bozeman, Montana, has there been any conversation between yourself, as attorney for Mr. Crenshaw, the landlord here, the proprietor, and the Rental Office there concerning investigations?

A. Yes.

Q. Will you tell the Court what that has been?

(Testimony of Eugene F. Bunker.)

A. In the first instance, the instructions, the conversation was to this effect: that if they desired to make an inspection of the apartments, that I would be glad to secure the permission and the time for them to make inspections, and if I were not in my office, that they should go to Mr. Crenshaw, but not to go direct. Thereafter, when this occurrence happened in the Crenshaw Apartments that Mr. Crenshaw has testified to, I went to Mr. DeNayer when I saw him in the office at Bozeman, and I told him not to go in there without notifying one or the other of us or see anybody else in there, that he was liable to catch Crenshaw in a bad mood and get thrown out.

Q. Was that utterance made on your part as a threat?

A. Not as a threat. It was made for the purpose of warning [159] him not to send somebody in there for the purpose of sneaking around. It was for his own good, not mine.

Q. I am not assuming that any member of the force there whose duty it was to discharge the provisions of the law ever did that, but at any time prior to any visit on their part, did they ever come to see you? A. No.

Q. Did they ever see you or come to your office prior to the occasion which resulted in the disturbance?

A. No.

(Testimony of Eugene F. Bunker.)

Q. Is there anything else you would like to tell the Court? A. Not that I know of.

Cross-Examination

By Mr. Knowlton:

Q. You made some inquiry about 22 at one time at the Rent Office? A. Yes.

Q. Weren't you able to find out what the rent was? A. No.

Q. You didn't make any inquiry about any other apartment?

A. No, I think when they didn't have the file there to show me how that order was secured and they said the other files were in Billings, that I didn't go any further.

Q. You were attorney for Mr. Crenshaw in the case of Woods [160] against Crenshaw, No. 344?

A. I presume, I don't know the number of the case.

Q. Haven't you represented Mr. Crenshaw in all the cases brought against him?

A. I think so.

Q. You have now stated that you have attempted to get Mr. Crenshaw into compliance with everything that came to your notice?

A. Yes, sir.

Q. This document was introduced in the cause of action of Woods against Crenshaw concerning

(Testimony of Eugene F. Bunker.)

Apartment 14. Mr. Crenshaw has testified that subsequent to that time he has charged much more; I believe he has testified he charged \$75 in connection with that apartment. Why didn't you get him in compliance with that order, which was for \$45?

A. Do you wish to tell me what times the violations arose in Action 344. I can't tell you. My memory was that that was a violation in 1946 prior to the \$65 orders.

Q. That record introduced in Cause No. 344 showed the rent to be \$45. Mr. Crenshaw has, after that, admittedly collected for that apartment \$75 a month.

A. At that time he had no notice, nor was it shown to him.

Q. You mean that you, as attorney for Mr. Crenshaw, didn't look at the exhibits as they were introduced in that cause and see that order? [161]

A. Certainly not, it is on the back of the exhibit up at the top where you couldn't see it to save your life. It was like that (indicating)—(interrupted)

The Court: Mr. Bunker—(interrupted)

The Witness: He is not telling me what I saw.

The Court: Mr. Bunker, resume the witness chair.

Q. You mean you didn't examine the exhibits before you passed them?

A. I mean just that.

The Court: This Court is not going to be a place for argument between counsel and a witness. Now,

(Testimony of Eugene F. Bunker.)

counsel can ask any questions that are admissible here, and the witness will answer them, and he will not argue with counsel. He will make whatever explanation he wishes to make, but it will not be in the form of argument. Proceed.

Q. If you will look at this document, Mr. Bunker, do you find anything on the back of that document?

A. That document was fastened together with the original registration. The original registration was the only matter in question at that time.

Q. But you never saw that at that time?

A. If I did, I didn't look at it. I wasn't interested, and the matter didn't have anything to do with this, nothing whatever. I looked to see only if that paper was signed by B. M. Crenshaw. If it was, I passed it. These papers were [162] all fastened together with a clip at the top. There was a stack of them a half-inch thick. I simply went through, and as I went through, I noted if there was any not signed by him.

Q. If you recall there was things not signed by Crenshaw, you must have objected to that and must have seen it.

A. Those papers were not asked about. They were a part of the file. They were subsequent to the matter on trial.

Q. The order establishing the maximum rent as of March 1, 1946?

A. It is dated four days before the trial.

(Testimony of Eugene F. Bunker.)

Q. I understand that.

A. It didn't have anything to do with the trial.

Q. Why didn't it have anything to do with the rent. The Rent Director has authority——(interrupted)

The Court: Don't argue with the witness.

A. It had no effect on the other case.

Q. That is your opinion?

A. No, it isn't my opinion, it is what I know. That is why I didn't object to it.

Mr. Knowlton: That is all.

The Court: Mr. Bunker, you testified you went to the Rent Director's office and had a discussion with the officials there with reference to making inspections of the apartment?

The Witness: That's right. [163]

The Court: What was the purpose of having inspections made?

The Witness: They requested inspections.

The Court: Who had requested inspections?

The Witness: Mr. DeNayer stated they wished to have inspections at various times.

The Court: It was upon the request of Mr. DeNayer that you went there to arrange for the inspections?

The Witness: The first time was when we were registering. Mr. DeNayer came over to the desk where we were registering and said at various times they might want to make inspections. At that time I explained to him and Mr. Crenshaw explained to him the matter of his being so busy and the matter

(Testimony of Eugene F. Bunker.)

of coming to us first if they wanted to make an inspection.

The Court: Your discussions with reference to that were not had upon the basis or for the purpose of having the maximum rents changed?

The Witness: Your Honor, my memory may be faulty, but I think the second time I went over and talked to Mr. DeNayer, many of these rooms had been changed from unfurnished to furnished, and I told him we would like to have them look at the furniture to see if everything was satisfactory and I asked him to come to me and let me take them through those rooms.

The Court: Did you ever ask the Rent Director to make an inspection of the apartments here involved, or any of them, in order to have the Rent Director change the order fixing the [164] maximum rent?

The Witness: Yes, I did, your Honor, that was very shortly—I think it was in May of 1946, I filed a petition for a change in rents and requested at the time of the filing of the petition that they come with me and go over the various apartments. They never came.

The Court: Well, at that time, in May, 1946, did you know of the various maximum rents that were set for each apartment?

The Witness: They hadn't been changed from the original filing only a month before.

The Court: May of 1946?

(Testimony of Eugene F. Bunker.)

The Witness: That's right, your Honor.

The Court: At that time the rents were fixed with reference to the original filing?

The Witness: That's right, your Honor.

The Court: At any time later then, did the matter of changes in the orders fixing the maximum rent ever come to your attention?

The Witness: Never, except, as I say, the one time when Mr. Crenshaw came to me and told me that—which I consider hearsay, of course—and I went to the office of the Director to find out if I was able. I was unable to find out, and I requested that any other change that would be made that notice be given to me.

The Court: So that the matter of the changes in the orders [165] was never called to your attention?

The Witness: They never were.

The Court: That is, it was never called to your attention by Mr. Crenshaw or the Rent Director?

The Witness: Yes, Mr. Crenshaw called my attention a considerable time later to another one at \$65—which one it was I don't know. Then, when this matter arose he told me about the \$75 one, which was the first time I knew that.

The Court: When did you first find out, Mr. Bunker, that there were maximum rent orders covering each separate apartment?

The Witness: You mean these secondary rental orders?

The Court: Yes, these orders that made changes.

(Testimony of Eugene F. Bunker.)

When did you first find out there were such orders?

The Witness: I don't know. I had never thought of it. As Mr. Knowlton called my attention to the fact it was in the file, if it was, I didn't pay attention to it. The only ones I knew were separate orders were the ones Mr. Crenshaw said he had seen.

The Court: With reference to those files, one in particular of which Mr. Knowlton questioned you about, those were part of the exhibits that were introduced in the other case?

The Witness: That's right.

The Court: And the particular matter here with which we are concerned, that is, the maximum rent order, was not in issue in that case, do I understand that? [166]

The Witness: That's right. I have a feeling, but I wouldn't say so positively, that I objected to the matters stamped on the back of the exhibits and the Court stated they would not be taken into consideration as being subsequent.

The Court: Isn't it probable then that at that time the maximum rent order was called to your attention?

The Witness: That there was such a thing?

The Court: That there was such maximum order?

The Witness: Yes, but I didn't think about it.

The Court: Would that be the first time you knew there was a change in the original rent registration?

(Testimony of Eugene F. Bunker.)

The Witness: I wouldn't say it was before or after the one I saw on 22.

The Court: How long have you known that there were maximum rent orders different than the original registration?

The Witness: I think when I received this case, 373, was the first time that it really percolated through my brain.

The Court: Has any effort been made since that time to comply with the orders?

The Witness: It has. We have attempted to find out just where we stood with reference to all of these things. The office has been closed part of the time down there, and in fact, you couldn't get in much of the time. I have been gone then, and it fell into abeyance. It was simply forgotten on my desk and in the files. I had gone over there, however, I would [167] say in June, and asked a girl who was in there at that time if she would make up a list of all of the Crenshaw Apartment rents according to their final orders. She said she was going to be there only a short time, but she would make a memo to that effect, and I never received that. I think this girl was there in that office only in an interim of some kind while the regular employee was not there. She was an employee of the office in Billings, I believe, this girl there in the office at Bozeman. That is my memory of it.

The Court: Do I understand your visit to the Rent Office on that occasion was after the commencement of the action in this case?

(Testimony of Eugene F. Bunker.)

The Witness: That's right.

The Court: The Rent Office never responded further?

The Witness: They never responded further.

The Court: That is all.

Redirect Examination

By Mr. Peterson:

Q. The Rent Office at Bozeman is now closed, is it not, Mr. Bunker?

A. It is now closed.

(Witness excused.)

Mr. Bunker: The defendant rests, your Honor.

Mr. Knowlton: The plaintiff has no rebuttal, your Honor.

The Court: Well, what is your pleasure with reference to [168] submitting proposed findings of fact and conclusions of law and memoranda supporting your proposed findings of fact and conclusions of law?

Mr. Peterson: We would suggest, if your Honor please, that the plaintiff submit such findings as he may have to offer and upon receipt of those, within a certain reasonable time, we be permitted to submit findings.

The Court: I think it would be better if you both separately and not wait for the other submit your own proposed findings of fact. In other words—will 15 days be sufficient for you?

Mr. Knowlton: It is satisfactory with me.

The Court: You submit the Court proposed findings of fact and conclusions of law and a memorandum argument supporting your proposed findings of fact and conclusions. After the service upon the opposing party of the proposed findings and memorandum, the opposing party may have 10 days within which to file a further memorandum and argument with the Court, but each side will, within 15 days serve and file their proposed findings of fact and conclusions in the case. Is that satisfactory.

Mr. Knowlton: That is satisfactory, your honor.

Mr. Peterson: That is satisfactory. [169]

United States of America,
State of Montana—ss.

I, John J. Parker, do hereby certify that I am the official Court Reporter in the above entitled court; that the foregoing transcript is a full, true and correct transcript of the proceedings had and the testimony taken in the cause of Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff, vs. B. M. Crenshaw and Jane Doe Crenshaw, his wife, defendants, being Civil Cause No. 373 in the Helena Division of said Court, tried before the Honorable W. D. Murray, United States District Judge, sitting without a jury, at Butte, Montana, on the 26th, 27th and 28th days of September, 1949.

Dated this 11th day of April, 1950.

JOHN J. PARKER,

Official Court Reporter.

[Endorsed]: Filed April 15, 1950. [170]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable The United States Court of Appeals for the Ninth Circuit, that the foregoing two volumes consisting of 179 pages, numbered consecutively from 1 to 179 inclusive, constitute a full, true and correct transcript of all portions of the record in case No. 373, Tighe E. Woods, Housing Expediter, vs. B. M. Crimshaw, required to be incorporated therein by designation of the appellant, as the record on appeal therein, as appears from the original records and files of said Court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Eighteen and no/100 Dollars (\$18.00) and have been paid by the appellant.

Witness my hand and the seal of said court at Helena, Montana, this June 26, 1950.

[Seal] /s/ H. H. WALKER,
Clerk U. S. District Court,
District of Montana.

Endorsed: No. 12601. United States Court of Appeals for the Ninth Circuit. B. M. Crenshaw, Appellant, vs. Tighe E. Woods, Housing Expediter, Office of Housing Expediter, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana.

Filed July 10, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

B. M. CRENSHAW, (Defendant),

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellee.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT WILL RELY AND DESIGNA-
TION OF RECORD FOR CONSIDERA-
TION ON APPEAL

To the Clerk of the Above-Entitled Circuit Court
of Appeals and to the Attorney for the Office of
the Housing Expediter:

You will please take notice that B. M. Crenshaw,

the appellant in the above entitled action, will rely on the following points in the Appeal in the above entitled case, to-wit:

(1) That the Housing Expediter as an agency of the United States Government, created by Veterans' Emergency Act of 1946 as amended (50 U.S. C.A. App. Sec. 1821 et Seq.) as extended and amended by Public Law 422 and 464 of the 80th Congress, does not relate to the management of the war itself, and that the act violates and is repugnant to the due process clause of the 5th amendment of the Federal Constitution and by the orders permitted under the act, violates the right to contract and that the United States District Court lacks jurisdiction of the matters tried in the case

(2) The evidence in the case is insufficient to sustain the trial Court's findings and judgment therein in the following matters:

a. Improper computation of monies collected from tenants.

b. Failure of the Housing Expediter to notify Appellant of the rent to be changed for various apartments.

c. Inequity in refusing to change rents on certain apartments and in retaining the rates for rents for identical apartments, both with and without notice, to appellant.

(3) The Trial Court erred in finding Appellant (defendant) Crenshaw, as landlord, had received notice of rent orders establishing maximum [153]

rent in that there was no definite proof that any personnel of the Bozeman Rent Office or any other authorized persons having mailed notices of rent orders and of changes; that testimony of Appellant that notice of rent orders were to be sent to his attorney and denial by Crenshaw and his attorney that either of them had received any notices of the rent orders from the Bozeman Rent Office or any other rent office.

(4) Refusal of the Trial Court to recognize contract for extra services and extra equipment over and above those services and equipment provided for in the maximum rent orders.

That the record upon which this Appellant is taken is the record of pleadings and evidence, orders, rulings, and findings, certified and transmitted by the Clerk of the United States District Court for the District of Montana, and the exhibits used in the case and transmitted by order of the Judge of said Court.

/s/ E. F. BUNKER,

/s/ E. A. PETERSON,

Attorneys for Appellant.

[Endorsed]: Filed July 10, 1950.